



**Kiptoo & 23 others v CECM for Lands, Physical Planning, Housing and Urban Development County Government of Baringo & another (Environment & Land Petition E003 of 2023) [2023] KEELC 22053 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 22053 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KABARNET  
ENVIRONMENT & LAND PETITION E003 OF 2023  
L WAITHAKA, J  
NOVEMBER 29, 2023**

**BETWEEN**

**MIRAJI KIPTOO & 23 OTHERS ..... PETITIONER**

**AND**

**CECM FOR LANDS, PHYSICAL PLANNING, HOUSING AND URBAN  
DEVELOPMENT COUNTY GOVERNMENT OF BARINGO . 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF BARINGO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> and 2<sup>nd</sup> respondents herein *inter alia* seek to arrest delivery of the ruling slated for 12<sup>th</sup> October 2023 in respect of the petitioner’s application dated 26<sup>th</sup> April 2023.
2. The application is premised on the grounds on its face and is supported by the affidavit of Julius Tarus Ruto, who has described himself as the County Attorney of the County Government of Baringo, the 2<sup>nd</sup> respondent/applicant.
3. As can be discerned from the grounds on the face of the application and the affidavit sworn in support thereof, the application is premised on the grounds that failure by the applicants to attend court on 27<sup>th</sup> June 2023 when the petitioners’ application dated 26<sup>th</sup> April 2023 came up for hearing was not deliberate, but was occasioning by technological challenges (internet problem) which caused him not to log in into the court’s platform.
4. Lamenting that the applicants’ response was disregarded by the court and the petitioners’ application set down for a ruling, the applicants appear to be faulting the procedure adopted by the court by claiming that parties were not afforded opportunity to file written submissions in respect of the application, which action he terms a usual court practice in such matters.



5. In reply and opposition to the application, the petitioners through the replying affidavit of Miraji Kiptoo (the 1<sup>st</sup> petitioner) sworn on 4<sup>th</sup> September 2023, have *inter alia* deponed that the applicants have never taken the petitioners' suit and application serious; that the excuse offered by the applicants is lame and that the applicants were indolent hence not entitled to an equitable remedy.
6. The petitioners' have further deponed that they are yet to be served with the applicants' pleading namely; memorandum of appearance, statement of defence and replying affidavit and reiterated that the applicants' conduct disentitles them exercise of the court's discretion in their favour.
7. On 20<sup>th</sup> September 2023, when the application came up for hearing, counsel for the applicants relied on grounds on the face of the application and the affidavit sworn in support thereof.
8. Counsel for the petitioners/respondents relied on the affidavit sworn in reply and opposition to the application. He submitted that going by the court record, the applicants' counsel has continuously failed to attend court and when they attended, they are always late. Accusing the applicants for taking the court for granted, he urged the court to dismiss the application.
9. I have carefully considered the cases urged by the respective parties and the reasons given in support of the cases. I have also taken into account the reason offered by the court for refusing to consider the applicants' response to the petitioners' application dated 26<sup>th</sup> April 2023, being want of service of the same on the petitioners.
10. I note that the applicants have not addressed the court on the issue of service of their application on the petitioners yet it is the ground on which the order sought to be reviewed or set aside was premised. I also note that the applicants did not address the question of service of the replying affidavit despite the same having been raised, yet again in the current application.
11. In the absence of any explanation why the applicants failed to file and serve their response within the time ordered by the court and there being nothing to show that the response was ever served on the petitioners/respondents, I find and hold that the applicants have not made up a case for exercise of the court's discretion in their favour. Consequently, I dismiss the application dated 12<sup>th</sup> July 2023 with costs to the petitioners/respondents.

**DATED, SIGNED AND DELIVERED THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2023**

**L. N. WAITHAKA**

**JUDGE**

Ruling delivered virtually in the presence of:-

Mr. Boiwo for the petitioner

Ms. Kaimogut for the respondents

