



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Rift Valley Provincial Land Disputes Appeals Committee & another; Appollo & 2 others (Interested Parties); Esther Kiberenge a.k.a Esther Nasambu & 2 others (Exparte Applicants) (Miscellaneous Application 1 of 2022) [2023] KEELC 21795 (KLR) (28 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21795 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
MISCELLANEOUS APPLICATION 1 OF 2022  
FO NYAGAKA, J  
NOVEMBER 28, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**RIFT VALLEY PROVINCIAL LAND DISPUTES APPEALS  
COMMITTEE ..... 1<sup>ST</sup> RESPONDENT  
CHIEF MAGISTRATES COURT KITALE ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**EDOANI WANYONYI APPOLLO ..... INTERESTED PARTY  
ELIJAH WASWA TABALIA ..... INTERESTED PARTY  
SAMSON SHANGU WASWA A.K.A ELIJAH WASWA MUKITE .... INTERESTED  
PARTY**

**AND**

**ESTHER KIBERENGE A.K.A ESTHER NASAMBU ..... EXPARTE APPLICANT  
LEVI WASWA MUKHWANA ..... EXPARTE APPLICANT  
SIMON SIMIYU TOILI ..... EXPARTE APPLICANT**

**RULING**

1. The Notice of Motion Application herein was instituted by Esther Kiberenge, Levi Waswa Mukhwana and Simon Simiyu Toili, the 1<sup>st</sup> to 3<sup>rd</sup> Ex-Parte Applicants. It is dated 23/02/2023 and supported by the Affidavit of Esther Kiberenge deposited on a similar date.



2. It seeks the following Orders:-
  1. Spent
  2. That this Honourable Court be pleased to Order the Respondent to be Committed to Civil Jail for contempt for disobedience of Court Orders issued on 8<sup>th</sup> February 2022.
  3. The Respondent do pay the costs of this Application.
3. The Application was grounded on the claim that on 7/02/2022, the Applicants were granted leave by this Court to apply for an Order of Certiorari and Prohibition in respect of the Eviction Order Rift Valley Provincial Land Disputes Appeals Committee, the 1<sup>st</sup> Respondent herein had obtained in Land Case No. 42 of 2008. The Applicants contended that the leave granted operated as stay of eviction. They argued that that Order was extracted and served upon the Respondent on 10/02/2022.
4. In the Supporting Affidavit, Ms. Kiberenge deposed that despite receiving the Order, the Respondent was interfering with the land by massively cutting down trees and causing cows to graze thereon. She deposed further that the Respondent was actively blasting and harvesting stones and had ploughed the suit land in readiness for planting.
5. It was her case that the Respondent had threatened and chased them (Applicants) away from their portion measuring 1 acre and 0.5 acres rendering them landless. They urged this Court to punish the Respondents for contempt of Court Orders.
6. The Applicants reiterated their case through written submissions dated 4<sup>th</sup> June 2023.

#### **The 1<sup>st</sup> Interested Parties' Case**

7. Edoani Wanyonyi Apollo, the 1<sup>st</sup> Interested Party herein, challenged the Application through his Replying Affidavit deposed to on 05/05/2022.
8. He deposed that he knew the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties as having litigated with them in Kitale Chief Magistrates Court Land Case No. 42 of 2008 and in Rift ally Provincial Land Disputes Appeal No. 9 of 2009. He deposed further that the Provincial Land Disputes Appeals Committee entered Judgment in his favour against the 2<sup>nd</sup> and the 3<sup>rd</sup> Interested Parties and confirmed that he was the lawful owner of Plot No. 49 Maeni Farm measuring 6 acres.
9. He swore further that on 05/02/2016, Samson Wakhungu Waswa, the 3<sup>rd</sup> Interested Party herein misled the Court into believing that Judgment of the Court in Kitale Chief Magistrates Court Land Case No. 42 of 2008 made on 8<sup>th</sup> January 2009 was valid hence issued an eviction Order against him.
10. He deposed that the eviction Order prompted him to make an application dated 26/02/2021 in order to set the record straight. It was his case that his application was allowed because the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties did not oppose it. That following that but before the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties were evicted from Plot No. 49 Maeni Farm, the County Surveyor re-established its boundaries and confirmed that it was less by 1.3 acres.
11. It was his case that the Applicants were or are strangers to Kitale Chief Magistrates Court Land Case No. 42 of 2008 and Nakuru Provincial Land Appeal No. 9 of 2009 and as such do not have locus standi and cannot be aggrieved by the decision of the Court in the said cases.
12. He further deposed that the 1<sup>st</sup> Applicant is the daughter of Kiberenge Kukwa the owner of Plot measuring 5 acres and that her name is not in the register. He deposed further that annexures EK7(a)



- and (b) by the 1<sup>st</sup> Interested Party do not show the Plot No. an indication that the share certificate is fraudulent.
13. It was his deposition that the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants were equally fraudsters and strangers to Maeni Farm and the plot No. 49(c) does not exist in the farm and the purported buyer and shareholder do not exist in the register and map of Maeni Farm.
  14. In conclusion he deponed that the Application offended the provisions of Order 53 Rule 2 of the *Civil Procedure Rules*.
  15. The 1<sup>st</sup> Interested Party filed submissions dated 12/06/2023. He submitted that the Application was bad in law and a design to delay the fair process of the Court. He submitted further that the Orders complained of were not issued against the Applicants herein. It was its case that that Applicants moved the trial Court for stay of execution of the eviction orders.

### **Analysis**

16. The only issue that lends itself for determination is whether the Application is merited. The one on costs of the application is a matter of course dependent on the course the event takes and the discretion of the court.
17. The genesis of the Application before this Court can be traced to the dispute before the Provincial Land Appeal Tribunal Committee Appeal No. 9 of 2009 whose judgment was rendered on 25/05/2011. On 05/02/2016, the findings of the Tribunal were adopted as Judgment of Court in Kitale Chief Magistrates Court Case No. 42 of 2008.
18. Before the Provincial Land Appeal Tribunal Committee Appeal No. 9 of 2009, Edoani Wanyonyi Appollo, the 1<sup>st</sup> Interested Party herein, was found to have legally purchased 6 acres of land known as Maeni Farm/49 from Elijah Waswa Tabalia the 2<sup>nd</sup> Interested Party herein.
19. In a bid to evict the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties herein from the suit land, Edoani Wanyoyi Appollo lodged before the magistracy a Notice of Motion dated 26/02/2021. He narrated to the Court how the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents deserved to be evicted from the suit land.
20. Upon hearing the Application on 13/10/2021 the Court issued an order of eviction against Elijah Waswa Tabalia and Elijah Waswa Mukite (2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties respectively) from the suit land. It ordered the Officer Commanding Station Saboti Police Station to use reasonable force to evict the them from the suit land.
21. The foregoing sequence of events led the 1<sup>st</sup> to 3<sup>rd</sup> Ex-Parte Applicants to file the Miscellaneous Judicial Review Application dated 03/02/2022.
22. Due to the centrality of the Application, I will reproduce the Orders sought in it. It was tailored as follows:-
  - a. An order of Certiorari and Prohibition to remove into the Honourable Court and quash the decision of the Rift Valley Provincial Appeals Committee presented and adopted as Judgment, order and decree of the Chief Magistrates Court in Kitale CMCC Land Case Number 42 of 2008 on 13<sup>th</sup> October 2021 ordering eviction of the Applicants from Land Parcel No. 49 Maeni Farm measuring 6 acres.
  - b. That the leave so granted to operate as stay of the decision of the Respondent in Kitale CMCC Number 42 of 2008.



- c. That costs of this Application be provided for.
23. Through an Order dated 07/02/2022, this Court allowed the 1<sup>st</sup> to 3<sup>rd</sup> Ex-parte Applicants' Application. The foregoing orders yielded the Application subject of this Ruling. The Ex-parte Applicants claimed that the 1<sup>st</sup> Interested Party violated the Orders of the Court issued on 07/02/2022.
24. I have carefully traced the sequence of events in this dispute. From its inception, it comes to the fore that the disputants before the Rift Valley Provincial Land Dispute Appeals Committee were the 1<sup>st</sup> Interested Party herein and the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties.
25. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants herein we not parties to the said proceedings. They only spring into the picture for the first time through the Application dated 23<sup>rd</sup> March, 2023 seeking to cite the 1<sup>st</sup> Interested Party as being in contempt of the Court Orders. To that end, the 1<sup>st</sup> Interested Party challenged their locus standi in this dispute. This now turns my focus onto the substance of the Application.
26. As has been enumerated in the foregoing paragraphs, the Application seeking eviction of the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties herein was lodged on 26<sup>th</sup> February 2021 and allowed on 13<sup>th</sup> October 2021.
27. The Applicant sought leave of this Court on 07/02/2022 in Kitale Misc. Application No. 1 of 2022 to file the Application for Judicial Review against the order of eviction. The Court issued the order on that date. The order, annexed to the instant application as EK1 was to the effect that the eviction which was issued by the trial court in Kitale CMCC Land Case No. 42 of 2008 was to be stayed pending the determination of the Judicial Review.
28. In my understanding, what was in issue and which the Court stayed was the eviction which had been ordered. The Application herein seeking to find the 1<sup>st</sup> Interested Party in contempt was instituted on 23<sup>rd</sup> March 2023, over one year later. Essentially, the Applicants are asking this Court to find the 1<sup>st</sup> Interested Party in contempt of Court Orders over matters that have been taking place in his full view all along since the issuance of the order. Why he brings this application too late in the day is unexplained. It is akin to raising issues retrospectively.
29. In Petition 11 Of 2020, *Oo V Mbo; Federation of Women Lawyers (Fida Kenya) & Another (Amicus Curiae)* (petition 11 of 2020) [2023] KESC 4 (KLR) The Supreme Court had occasion to discuss the concept of retrospectivity with particular reference to laws. It observed as follows;
- “The *Black's Law Dictionary (6th Edition)*, defines retrospective law as: “A law which looks backward or contemplates the past; one which is made to affect acts or facts occurring, or rights accruing, before it came into force. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. One that relates back to a previous transaction and gives it a different legal effect from that which it had under the new law when it occurred.”
57. Further, *Halsbury's Laws of England, 4th Edition, Re-Issue Volume 44(i)* para 1433 states as follows on enactments: -“It is a principle of legal policy that an amending enactment should be generally presumed to change the relevant law only from the time of the enactment's commencement.”
30. It is to be noted that the 1<sup>st</sup> Interested Party was already on the land before the Stay Orders were issued. When did he move out before or after the order? I do not find such evidence. In any event as I have



stated before, in paragraph 28 above, what the lower court ordered was the eviction of the applicant herein from the suit land. Then what this Court stayed when it granted leave to file the instant Judicial Review Application was the eviction.

31. In the premises, institution of the contempt proceedings despite knowledge of the circumstances obtaining in the suit land is an attempt by the Applicants to steal a march on the 1<sup>st</sup> Interested Party and to subvert the course of justice. This application cannot pass for a meritorious one. It would have been advisable for the Applicant to spend his energies on prosecuting the substantive application of Judicial Review rather than engaging in side shows.
32. Let us hear the conclusion of the whole matter: I find and hereby hold that the Application is without merit and is hereby dismissed with costs to the 1<sup>st</sup> Interested Party. The parties are hereby directed to attend this court on 13/12/2023 for further directions on the hearing of the substantive application.
33. It is so Ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA EMAIL THIS 28<sup>TH</sup> NOVEMBER, 2023.**

**HON. DR. IUR FRED NYAGAKA**

**JUDGE**

