



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Wafula (Suing as Intestate Estate Administrator's Nominee) & another v M/
S Wekesa and Simiyu Advocates & 13 others (Environment & Land Petition
E002 of 2023) [2023] KEELC 21840 (KLR) (28 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21840 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E002 OF 2023
JA MOGENI, J
NOVEMBER 28, 2023

BETWEEN

**BENJAMIN BARASA WAFULA (SUING AS INTESTATE ESTATE
ADMINISTRATOR'S NOMINEE) 1ST APPLICANT**
**AYUB MURUMBA KAKAI (SUING AS INTESTATE ESTATE
ADMINISTRATOR OF THE LATE WELLINGTON WELEKHASIA
KAKAI) 2ND APPLICANT**

AND

M/S WEKESA AND SIMIYU ADVOCATES 1ST RESPONDENT
JOSEPH WAMBATI WAKOLI 2ND RESPONDENT
MURUMBA CHIULI 3RD RESPONDENT
THE COUNTY GOVERNMENT OF BUNGOMA 4TH RESPONDENT
**THE HON. ATTORNEY GENERAL OF KENYA FOR HON. JUSTICE
OKONG'O 5TH RESPONDENT**
**THE HON. ATTORNEY GENERAL OF KENYA FOR CABINET
SECRETARY MINISTRY OF LANDS, HOUSING AND URBAN
DEVELOPMENT 6TH RESPONDENT**
THE NATIONAL COMMISSIONER OF LANDS 7TH RESPONDENT
OSMAN KULOVA KAKAI 8TH RESPONDENT
IBRAHIM SOITA KAKAI 9TH RESPONDENT
TACHONI CULTURAL SOCIETY CHAIRMAN 10TH RESPONDENT



**TACHONI CULTURAL SOCIETY COMMITTEE SECRETARY 11TH
RESPONDENT**

PATRICK KISAKA MUNIAFU 12TH RESPONDENT

ASHON SIKOLIA WANYONYI 13TH RESPONDENT

M/S J. W. SICHANGI & CO. ADVOCATES 14TH RESPONDENT

RULING

1. There are two applications before me the first is dated 07/07/2023 which is a chamber summons filed by the applicant. It is filed under order 37 and rules 3, 8 and 11 of the Civil Procedure Rules. Seeking the following prayers:
 1. That, it pleases the Registry through the Deputy Registrar of this Hon. Court to return the entire file; before the Trial Judge sitting in Chambers for disposal of this Application, prior to delivering the Ruling scheduled for the same 10th day of July, 2023; at 9:30 am or soon thereafter in the forenoon. Judge; after the Registry failed to notify Litigants about filing Hard Copies, after the Judiciary Lockdown Directions to curb Corona Virus (COVID 2019) Pandemic.
 2. That, it pleases this Hon. Court to set aside the Practicing Directions and Orders for the Ruling scheduled on the same the same 10th day of July, 2023; at 9:30 am, the Virtual Link In-charge, declined placing the Petitioners' Submissions before the Trial Judge for good ends of Justice; even after the 1st Petitioner herein visiting the Registry thrice.
 3. That, after setting aside the Practicing Directions and Orders for the Ruling scheduled on the same the same 10th day of July, 2023; at 9:30 am, it pleases this Hon. Court to hear this Orally for avoiding doubts, after being denied chance to be heard orally by the Environment and Land Court registry at Nairobi.
 4. Costs for this process.
2. The second application is also a chamber summons filed by the applicant seeking the following prayers:
 1. That, it pleases the Registry through the Deputy Registrar of this Hon. Court to return the entire file; before the Trial Judge sitting in Chambers for disposal of this Application, after delivered the Ruling on 10th day of July, 2023; after 10:30 am without hearing the Petitioners by way written Submissions and the Application dated 7th July, 2023.
 2. That, after issuing such Orders, it pleases this Hon. Court to issue Orders declaring every Kenyan or any person has the right to come before any Court of Law, pursuant to article 22: clause 1 & 2 (a – c); article 50: Clauses 1 up to 9 and article 159: clauses 1 & 2 (2 a – c) of the Constitution; alleging something wrong is happening against matters determined between 31st July, 1991 and 31st January, 2014; after the 2nd up to 14th Respondents herein, complied with the Government Letter made on 22nd November, 1973.
 3. That, it pleases this Hon. Court to issue ex parte orders setting aside the Ruling delivered on 7th July, 2023; after delayed upload on 7th July, 2023 of the Petitioners' Submissions; after the Trial Judge had written the Ruling without the Petitioners' Submissions.



4. That, it pleases this Hon. Court to issue Ex Parte Orders for maintaining the 1st Respondent in this Case due to knowingly and fraudulently, giving false written and oral information; assisting and helping the 2nd up to 7th to procure part- portions of LR No Ndivisi/ Muchi/1265 falsely; through defense, replies, grounds of opposition and submissions.
 5. That, after issuing such Orders, it pleases this Hon. Court to permanently stay the 1st Respondent from interfering with Surveyor and Town Engineer's Development Plan No 14; which was determined on 19th September, 1976 and approved on 8th February, 1977; pursuant to Government of Kenya Letter made on 22nd November, 1973.
 6. That, after issuing such Orders, it pleases this Hon. Court to declare its the 1st Respondent misadvising the 2nd up to 14th Respondents, by cheating, its the late Willingtone Welehasia Kakai and the Petitioners herein; who scandalized the Surveyor's and Town Engineer's Development Plan No. 14; which was registered on 19th September, 1976 and approved on 8th February, 1977; pursuant to Government of Kenya Letter made on 22nd November, 1973.
 7. That, after issuing such Orders, it pleases this Hon. Court to issue declaration Orders for reinstating the 1st Respondent herein; who while knowingly and fraudulently; is interfering with the Surveyor's and Town Engineer's Development Plan No. 14; which was determined on 19th September, 1976 and approved on 8th February, 1977; pursuant to Government of Kenya Letter made on 22nd November, 1973.
 8. That, after issuing such Orders, it pleases this Hon. Court to declare and uphold the Verdicts reached between 31st July, 1991 and 31st January, 2014; after the 2nd up to 14th Respondents herein, complying with the Government Letter made on 22nd November, 1973.
 9. That, after issuing such Orders, it pleases this Hon. Court to issue Orders compelling the 1st Respondent herein, for misappropriating the Petitioners' County Treasury on matters determined between 31st July, 1991 and 31st January, 2014; after the 2nd up to 14th Respondents herein, on compliance with the Government Letter made on 22nd November, 1973.
 10. That, after issuing such Orders, it pleases this Hon. Court to issue Orders compelling the 1st Respondent herein, under the *Registered Land Act* No. 6 of 2012: Section 157 (1 a – c (i-iii) & d); due to knowingly and fraudulently obstructing and or resistance against the Verdicts determined between 31st July,1991 and 31st January, 2014; after the 2nd up to 14th Respondents herein, complied with the Government Letter made on 22nd November, 1973.
 11. Costs for this process.
4. When the parties appeared in court on 2/10/2023, the Respondents stated that they had filed a preliminary objection but I have searched the CTS to no avail I only came across these two chamber summons filed by the applicant.
 5. I have keenly combed through the two applications and noted that there was no response from any of the respondents. Further, I have struggled to understand the application and I am not sure I can make head or tail of the applications.
 6. With regard to the claim the petition did not disclose any denial, violation, infringement or threat to the petitioner's acquisition and ownership of the property LR No Ndivisi/Muchi/1265.



7. In the case of *Sophia Nyakerario Maina And Sebastian Adala (Suing on their own behalf and in the interest of 440 other Applicants being inhabitants of Properties known as Land Reference Number 209/12016) v Kenya Airports Authority & 3 others* [2020] eKLR the court stated:

“...The last issue is whether the petitioners are entitled to any of the relief set out in the petition against any of the respondents. Having found that the petitioners have not proved lawful ownership and occupation of the suit property and have similarly failed to establish violation(s) of their constitutional right(s) by any of the respondents, it follows that they have failed to prove their petition on a balance of probabilities. The net result is that they are not entitled to any of the reliefs sought in the petition.”

8. The applicant in both applications has addressed issues relating to the right to be heard and praying that the court sets aside practice directions without stating which practice directions he was referring to and how they relate to his claim of the suit property LR No Ndivisi/Muchi/1265.
9. In the application dated 17/07/2023 the applicant alleged that the 2nd to 7th respondents had attempted to acquire a portion of the suit property. My reading of both applications has not provided clarity on what exactly was being sought by the applicant.

Determination

10. I have considered the material laid before me. I have misgivings about the way the applicant has drafted the applications. The presentation, articulation and thrust of the applicant's applications is largely not clear.
11. The orders sought in the applications which are meant to be interim or interlocutory are also not well laid out leaving the court wondering what exactly is being sought. In the case of *Anarita Karimi Njeru v Republic* (1979) KLR 184 the Honorable Judges Trevelyan and Hancox JJ held that
- “We would however again stress that if a person is seeking redress from the High Court on a matter which involves reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set with reasonable degree of precision that of which he complains the provisions said to be infringed and the exact manner in which they are alleged to be infringed. The principle was resounded in *Matiba v AG*. High Court Misc. 66/1990 also as contained in the case of *Ben Kipeno & Others v the Attorney General & Another* (2007) eKLR.”
12. I expected the applicant to make a case for necessary legal considerations required to grant the prayers he has made and then highlight the consequences that would befall the applicants if the orders are not granted. Instead, the jumbled manner in which the applications are drafted left me inevitably unable to place my figure on what I could grant as prayers.
13. None of the respondents filed any replying affidavit I believe they were in same space I was in; they could not understand the applications. The application are to say the least off target.
14. As a court I understand the importance of allowing all litigants their space at the seat of justice to canvas their cases without paying too much attention to technicalities but there is a limit to how much wiggling room one can make for litigants. The seat of justice is not a space to be used for a game of “mingle mingle mingle”. Otherwise one risks coming out with “spaghetti” type of pleadings/ applications like what I have before me.



15. Given this kind of a scenario invariably, as a court I am therefore presented with no other choice but to strike out the applications.
16. When things are jumbled up like this, the respondent(s) does not lose. It is the applicant who does not win. While the respondent's side gains from the applicant's gaffe, the applicants gain nothing from the respondents.
17. The end result is that the prosecution of the applications by the applicant was wanting. Both applications fell short of reaching the necessary threshold for positive results. The upshot there is that both applications are hereby dismissed with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2023.

MOGENI J

JUDGE

In the virtual presence of:

Mr. Wesonga for the 2nd, 3rd and 4th Respondents

In person: Benjamin Barasa Wafula 1st Petitioner

In person Mr. Wellington Wekehasai Kakeu 2nd Petitioner

No appearance for the 5th – 14th Respondents

