



REPUBLIC OF KENYA



**Kimani v Embakasi Ranching Company Limited & 2 others (Environment & Land
Petition E051 of 2022) [2023] KEELC 22511 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22511 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E051 OF 2022
EK WABWOTO, J
DECEMBER 20, 2023**

BETWEEN

MARY STELLA WANJIRU KIMANI PETITIONER

AND

EMBAKASI RANCHING COMPANY LIMITED 1ST RESPONDENT

KEVIN KIIRU CHOMBA 2ND RESPONDENT

THE CHIEF LANDS REGISTRAR 3RD RESPONDENT

RULING

1. This ruling is in respect to Petitioner's Notice of Motion application dated 3rd November 2023 which was accompanied by a Supporting Affidavit sworn by Mary Stella Wanjiru Kimani, seeking the following orders:
 - i. Spent...
 - ii. That pending the hearing and determination of this Application inter partes, there be an order for maintenance of the status quo ante the delivery of the ruling by Hon Justice Wabwoto on 2nd November 2023.
 - iii. That there be an order for maintenance of the status quo ante the delivery of the ruling by Hon Justice Wabwoto on 2nd November 2023 pending the hearing and the determination of the Petition herein.
 - iv. That the costs of this application be awarded to the Petitioner.
2. The Application was made premised on several grounds including that on 2nd November 2023, this court delivered a ruling allowing the second respondent's Notice of Motion Application dated 21st June 2023. The Application had sought to discharge the orders of injunction issued by this



Honourable Court on 20th December 202 pursuant to the Petitioner's Application dated 17th November 2022. The sole ground for the discharge of the injunctive orders was that the Honourable Court was not satisfied that effective service of the Petitioner's Application was made upon the second respondent. It was also averred that this Honourable Court has directed that the Petition proceeds for hearing on 28th February 2024. Further it was stated that in the Application dated 17th November 2022, the Petitioner had sought *inter alia* the following orders:

- a) That pending the hearing and determination of this Application, the Court does grant a temporary injunctive order restraining the first and second respondents either by themselves, their agents, servants and /or personal representative from interfering with the Petitioner's quiet possession and enjoyment of the Property known as Plot No. 136/807 situate in Embakasi within the Republic of Kenya ("the suit Property").
 - b) That pending the hearing and determination of the Petition herein, the Court does grant a temporary injunctive order restraining the first and second Respondents either by themselves, their agents, servants and /or personal representative from interfering with the Petitioner's quiet possession and enjoyment of the Property known as Plot No. 136/807 situate in Embakasi within the Republic of Kenya ("the suit Property").
 - c) That a Conservatory Order be and is hereby issued staying and suspending the decision of the agents of the First Respondent cancelling the Petitioner's name in the first Respondent's register and replacing it with the second respondent's name pending the hearing and determination of this Application.
 - d) That a Conservatory Order be and is hereby issued staying and suspending the decision of the agents of the first respondent cancelling the Petitioner's name in the first respondent's register and replacing it with the second respondent's name pending the hearing and determination of this Petition. The matter came up for hearing of the Application on 20th December 2022 whereupon the Court being satisfied that service of the Application had been effected upon all the parties, and no responses having been filed against the same, granted the Application as sought. By a Notice of Motion Application dated 24th June 2023, filed over six months later, the Second Respondent sought to discharge the orders of injunction issued on 20th December 2022 on the sole ground that he was not served with the Application. This Honourable Court by its ruling dated and delivered on 2nd November 2023 discharged the injunctive orders on the basis that there was insufficient service on the Second Respondent. Directions were issued for the hearing of the Petition to proceed on 28th February 2024. The Petitioner is in actual possession and occupation of the suit Property, having been so in occupation since she purchased the same sometime on 2nd July 2013. She has erected thereon permanent residential structures and also tills the suit Property and keep domestic animals thereon. The second respondent has in the past attempted to enter and trespass onto the suit Property and interfering with the Petitioner's quiet possession and enjoyment of the same necessitating the filing of the injunction application. The discharge of the orders of injunction are in no way related to the merits of the application and was solely on account of the issue of service and that unless this application is heard as a matter of urgency and the status quo orders sought herein granted, the Petitioner is reasonably apprehensive that the Respondents will immediately move to interfere with the Petitioner's quiet possession and enjoyment of the suit property, an action that would occasion great injustice the Petitioner.
3. On 7th November 2023, the Court made the following directions with regard to the application;
- a. That the application be canvassed by way of written submissions.



- b. That the Applicant to file and serve written submissions within 7 days from today.
 - c. That upon service, the Respondents shall be at liberty to file and serve their response together with written submissions within 7 days.
 - d. That the Applicant to have corresponding leave if need be to file further affidavit and further submissions within 7 days.
 - e. That upon compliance with the above, the court shall proceed to deliver its ruling on notice.
 - f. That in default of compliance to this order by the Applicant, the application dated 3rd November 2023 shall automatically stand dismissed without any further reference to this court. [Emphasis added]
4. Perusal of the Court records confirms that the Applicant filed her submissions dated 17th November 2023 on 21st November and served on 22nd November 2023. This being a flagrant disregard of the Court's directions. In so far as the Court is called upon to disregard undue technicalities, it cannot and should never disregard its own directions. No plausible explanation has been offered by the Petitioner for non-compliance of the court's orders/directions issued on 7th November 2023.
5. In the foregoing, this court makes the following orders;
- a. The Notice of Motion application dated 3rd November 2023 stands dismissed pursuant to the orders made on 7th November 2023.
 - b. Costs will abide the determination of the main petition
 - c. Matter will proceed for hearing on 28th February 2024 as earlier scheduled.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF DECEMBER 2023.

E. K. WABWOTO

JUDGE

