



Parkua & another v Langoi (Personal Representative of Oiboole Kiria Lorkidinga - Deceased) & another (Environment & Land Case E042 of 2023) [2025] KEELC 3732 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3732 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E042 OF 2023**

**MD MWANGI, J
APRIL 30, 2025**

BETWEEN

JOHN KASAINI PARKUA 1ST PLAINTIFF

KIDEMI OLE PARKINYIOT 2ND PLAINTIFF

AND

DAVID LANGOI (PERSONAL REPRESENTATIVE OF OIBOOLE KIRIA LORKIDINGA - DECEASED) 1ST DEFENDANT

OIBOOLE KIRIA LORKIDINGA (DECEASED 2ND DEFENDANT

(In respect to the notice of motion dated 31st October 2023 brought under the provisions of Order 40 of the Civil Procedure Rules, Section 1A and 1B, 3A and 63 (c) and (e) of the [Civil Procedure Act](#))

RULING

(In respect to the notice of motion dated 31st October 2023 brought under the provisions of Order 40 of the Civil Procedure Rules, Section 1A and 1B, 3A and 63 (c) and (e) of the Civil Procedure Act).

Background

1. The plaintiff’s application under consideration is the notice of motion dated 31st October 2023 seeking for an order that, “the defendant/respondent, his servants, agents and or otherwise to allow accessing and or carrying on of the affecting of the ruling dated 17th November 2021 on the correct boundaries on all that property known as Title Number Kjd/Meto/470 to the plaintiffs/applicants”. Further that in default, a warrant of arrest order do issue against the defendant/respondent and the OCS, Namanga Police Station do ensure compliance and peace prevails.



2. The application is premised on the grounds on the face of it, and on the supporting affidavit of John Kasaine Parkua and Kidemi Ole Parkiny'ot sworn on 31st October 2023.

Issues for determination

3. Having carefully considered the application, the sole issue for determination is whether the application is merited.

Analysis and determination.

4. Though the application is expressed to have been brought under the provisions of Order 40 of the Civil Procedure Rules, which deal with interlocutory applications and temporary orders, the plaintiffs/applicants do not seek an order of temporary injunction. Indeed the order sought in the application is the very same order sought in the main suit.
5. The plaintiffs' application is more of an application for summary judgment. However the applicants do not state so neither have they set out the grounds for the grant of orders of summary judgment.
6. Mativo J (as he then was) in the case of Crown Health Care –vs- Jamy Imaging Centre Limited (204) eKLR, observed that;

“The quest for summary judgment is based on a trite argument that there are no triable issues of fact and the motion is initiated by a plaintiff that contends all the necessary factual issues are settled, and therefore need not be tried. The purpose of summary judgment procedure is to afford an innocent plaintiff who has an unanswerable case against an elusive defendant a must speedier remedy than that of waiting for a conclusion of an action”.
7. The Learned Judge cited with approval the holding in the case of Maharaj –vs- Barclays National Bank Limited 1976 (1) SA 418 (A) where Corbett Judge stated that;

“The grant of the remedy is based on the supposition that the plaintiff's claim is unimpeachable and that the defendant's defence is bogus and bad in law”.
8. To grant an order of summary judgment the court must be satisfied that the defence is a sham; and that it raises no bona fide triable issue worth a trial by the court.
9. As I already stated earlier on, the plaintiffs have not set out the grounds to the grant of an order of summary judgment; neither have they sought one. Their application is unmerited and lacks standing or basis in law. It is dismissed with costs to the defendant/respondent.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 28TH DAY OF APRIL 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kathyaka for the respondent

No appearance for the plaintiffs/applicants

Court Assistant- Mpoeye

M.D. MWANGI



JUDGE

