



REPUBLIC OF KENYA



Kimani & another v Meeli & another (Environment & Land Case 108 of 2017) [2025] KEELC 3739 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3739 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 108 OF 2017**

LC KOMINGOI, J

APRIL 24, 2025

BETWEEN

PETER MUNGAI KIMANI 1ST PLAINTIFF

ELIZABETH WANJIKU NJOROGE (AS ADMINISTRATOR OF THE ESTATE OF JOHN DUNCAN MBICHI - DECEASED) 2ND PLAINTIFF

AND

BISHOP MOSES MEELI 1ST DEFENDANT

TIMOTHY KIIPAPA MEELI 2ND DEFENDANT

RULING

1. This is the ruling in respect of the Notices of Motion dated 27th November 2024 and 13th January 2025. On the 22nd of January 2025, the Court directed that the two applications be heard together.
2. The Notice of Motion dated 27th November 2024 is brought pursuant to the Judgement of this Hon. Court dated 14th March 2024. The gist of the Application is that the Defendants have wilfully failed to comply and/or vacate the suit property. It seeks that the Defendants be held in contempt of court.
3. The Application is opposed by the 1st and 2nd Defendants.
4. The 2nd Plaintiff's counsel stated that they support this motion.
5. The 4th Defendant (in the counterclaim) told the court that they would not be filing any response or submissions to the two applications.
6. The Notice of Motion dated 13th January 2025 is brought by the 1st and 2nd Defendants. It seeks orders;
 - i. Spent
 - ii. Spent



- iii. The Judgement entered and all consequential orders against the 1st and 2nd Defendants/Applicants be set aside unconditionally.
 - iv. That the dismissal of the Notice of Motion dated 4th December 2023 on the 13th December 2023 be set aside and vacated and the said application be set for hearing.
 - v. That costs of this application be provided.
7. The grounds are on the face of the Application and are set out in paragraphs a to h. The same is supported by the Affidavit of Winston Ngaira, Advocate for the 1st and 2nd Defendants sworn on 13th January 2025.
 8. The Application is opposed. There is a Replying Affidavit sworn by Peter Mungai Kimani, the 1st Plaintiff/Respondent. There is also a Replying Affidavit sworn by the 2nd Plaintiff/Respondent on the 22nd January 2025.
 9. I have considered the Notice of Motion dated 13th January 2025, the Affidavit in support, the Responses thereto, the Rival submissions and the authorities cited. The issue for determination is whether this application is merited.
 10. The court record is very clear. On the 28th March 2023, when the 2nd Plaintiff closed her case, Mr. Ngaira for the 1st and 2nd Defendants sought an adjournment on the grounds that the expert report was not in the court record. It should be noted that the 1st and 2nd Defendants were present in court.
 11. Despite opposition from the other parties, the court granted the adjournment and set the date for defence hearing on the 19th of June 2023. On that date, the 1st and 2nd Defendants' counsel was not present. The matter could not proceed for hearing as Ms. Karanja for the 4th Defendant (in the counterclaim) was bereaved. The matter was fixed for defence hearing on 28th of September 2023.
 12. On the 28th of September 2023, there was no appearance for the 1st and 2nd Defendants. Ms. Makau, who was holding brief for Mr. Mutia for the 3rd Defendant (in the counterclaim) sought that the 1st and 2nd Defendants' counterclaim be dismissed for non-attendance. This prayer was supported by Ms. Karanja for the 4th Defendant (in the counterclaim) and Ms. Mutinda for the 2nd Plaintiff.
 13. The court agreed with the submissions of counsel present that the 1st and 2nd Defendants appeared disinterested in their case and as they had also been given the last adjournment on 19th of June 2023, dismissed their defence and counterclaim with costs to the other parties.
 14. Directions were given on filing of submissions and Judgement was eventually delivered on 14th of March 2025. The 1st and 2nd Defendants filed the Notice of Motion dated 4th December 2024 which they failed to prosecute and the same was dismissed for non-attendance. They have again filed the Notice of Motion dated 13th January 2025 seeking to reinstate the Notice of Motion dated 4th of December 2024. These are parties who have been indolent. They have always frustrated the conclusion of this matter. This application has been brought after inordinate delay. No explanation has been given.
 15. I find that the same has been brought in bad faith after the 1st Plaintiff filed the Notice of Motion dated 27th November 2024. In the case of Mbogo VS Shah [1968] EA 93, the Court held thus; "This discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertent or excusable mistake or error, but it is not designed to assist a person who has deliberately sought, whether by evasion or otherwise to obstruct or delay the course of justice."



16. I am not satisfied that the 1st and 2nd Defendants have demonstrated sufficient grounds to warrant this Court to exercise discretion in their favour. I find no merit in the Notice of Motion dated 13th January 2025, and the same is dismissed with costs to the Plaintiffs and the 4th Defendant in the counterclaim.
17. As regards to the Notice of Motion dated 27th November 2024, I have considered the Affidavit in support, the response thereto and the rival submissions and find that the issue for determination is whether the same is merited.
18. As stated earlier, judgement was delivered on 14th March 2024. To date the 1st and 2nd Defendants have not preferred any appeal. They have refused to vacate the suit property. This has deprived the Plaintiffs of their lawful right to quiet possession of the suit property. In the case of *Kambi & 3 others VS Chome & 9 others* [2025] KEELC 421 (KLR), the ingredients of the offence of contempt of court were set out as follows;

“

- a) there must be an order that is obliged to have been disobeyed;
- b) the alleged contemnor must have knowledge of the order;
- c) he must be found by the Court to be in wilful disobedience of that order for him to be committed for contempt.”

I find that the above ingredients have been satisfied in the instant scenario.

19. The contemnors herein have been aware of the Judgement since 14th March 2024 yet they have refused to vacate the suit property. I find that they have wilfully disobeyed this Court's orders.
20. I find each of them to be in contempt of this Court's Judgement dated 14th March 2024.
21. In conclusion, I find merit in this application and the same is allowed. The 1st and the 2nd Defendants are found to be in contempt of Court.
22. They are hereby ordered to purge the contempt within 30 days from the date of this ruling. In default, they shall be liable to pay a fine of Kshs. 200,000, failure to which they shall be liable to six (6) months imprisonment. The costs of this application shall be borne by the 1st and 2nd Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF APRIL 2025.

L.KOMINGOI

JUDGE

IN THE PRESENCE OF:

N/A for the 1st Plaintiff

Ms. Radol for the 2nd Plaintiff

Mr. Ngaira for the 1st and 2nd Defendants

N/A for the 3rd and the 4th Defendants (in the counterclaim)

Court Assistant: Mutisya

