



REPUBLIC OF KENYA



KENYA LAW
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**Mbari & others v Abeid & 3 others (Petition 53 of 2021)
[2022] KEELC 2274 (KLR) (15 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2274 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
PETITION 53 OF 2021**

**M SILA, J
JUNE 15, 2022**

BETWEEN

MATANO TSUI MBARI & OTHERS PETITIONER

AND

MOHAMED KARAMA ABEID 1ST RESPONDENT

YUSUF KARAMA TAMIMI 2ND RESPONDENT

LAND REGISTRAR, MOMBASA 3RD RESPONDENT

COUNTY GOVERNMENT OF MOMBASA 4TH RESPONDENT

RULING

1. This ruling is in respect of an application dated 31 January 2022 filed by the 4th respondent, the County Government of Mombasa. The application seeks orders that the petition be struck out against the 4th respondent. The application is based on the grounds inter alia that nowhere in this petition does the petitioner implicate the applicant for any omission or wrongful action and there is no cause of action against the applicant. The applicant also avers that there are no orders sought against her and the applicant is therefore not a necessary party in this petition. No response was filed to the application.
2. I have gone through the petition. The petitioners aver to be residents of Maganda Village, in Miritini area, Mombasa County. They claim that they have been using a public access road which passes through the land parcel No. 3851/VI/MN currently registered in the name of the 1st and 2nd respondents as joint lessees from the applicant. They aver that the 1st and 2nd respondents have erected a perimeter wall around the property thus blocking residents from using the access road. In the petition, the petitioners seek the following prayers :-
 - i. An injunction against both the 1st and 2nd respondents restraining them from interfering in any way whatsoever with the subject matter public access road.



- ii. A declaration that the petitioners have a right to use the said public access road.
 - iii. A declaration that the respondents are in violation of the provisions under Article 40 of *the Constitution* and Section 98, 99 and 100 of the *Land Registration Act*.
 - iv. A declaration that the petitioners' right to human dignity as contained in Article 28 of *the Constitution* was violated by the respondents.
 - v. An order be issued for the demolition of the perimeter wall constructed by both the 1st and 2nd respondents blocking the public access road.
 - vi. Costs of the petition.
3. I think the 4th respondent is a necessary party to the suit, firstly because she is the lessor of the suit land, and secondly, because she is in charge of developments within its jurisdiction, including the grant of building permission. If it will be declared that there is a public access road passing through the disputed property, then the proprietary rights of the applicant, as lessor, stand to be affected. There is also a question to be tried as to whether the development of the 1st and 2nd respondent needs to be demolished, which is a development on land owned by the applicant. It is claimed that no order is sought against the applicant, but there is the prayer for a declaration that the respondents (and this covers all respondents including the applicant) are in violation of the provisions of Article 40 of *the constitution* and Sections 98, 99 and 100 of the *Land Registration Act*. There is also the prayer for a declaration that the respondents have violated the petitioners' rights under Article 28 of *the Constitution*. It cannot therefore be said that there is no order sought against the applicant.
 4. I think the petitioners have displayed a cause of action against the applicant and I am unable to order that this petition be struck out against the applicant.
 5. For the reasons above, this application is dismissed, but since the petitioners did not file anything to oppose it, I make no orders as to costs.
 6. Orders accordingly.

DATED AND DELIVERED THIS 15 DAY OF JUNE 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT MOMBASA

