



**Others & 21 others v Kahia (Land Case E071 of 2024)
[2025] KEELC 3156 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3156 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
LAND CASE E071 OF 2024**

YM ANGIMA, J

APRIL 3, 2025

BETWEEN

**PETER GICIRA & 21 OTHERS & 21 OTHERS & 21 OTHERS & 21
OTHERS PLAINTIFF**

AND

OSMAN AHMED KAHIA DEFENDANT

RULING

A. Plaintiffs' application

1. By a notice of motion dated 26.09.2024 filed pursuant to Order 40 Rules 3(1), (2) and (3) of the Civil Procedure Rules and Sections 1A, 1B, and 3A of the Civil Procedure Act (Cap 21) the plaintiffs sought the following orders against the defendant.
 - a. That service of this application be dispensed with in the first instance the same be heard ex-parte and certified urgent.
 - b. That the defendant be committed to jail for contempt of court for defiance of the orders for maintenance of the status quo granted by this court on 19th August 2024 by constructing a perimeter wall within the subject matter land and using goons to interfere with the plaintiff's peacefully and continued quiet occupation and use of the subject matter land.
 - c. That pending the hearing and determination of this application inter-partes, the court be pleased to order that the Defendant to revert the subject land Plot number LR No. 3661/VI/MN, (CR.NO. 19580) which Defendant has fraudulently christened as parcel number I-R No. MN/VI/5139 in the middle of plot number I-R No. 3661/VI/MN, (CR. No. 19580) to the situation it was at the time the orders of status quo were made on 19.08.2024.



- d. That the court be pleased to order that the Defendant removes the iron sheets and other material which has been placed on the subject land herein acting as a fence enclosing the subject land herein so that the subject land reverts to the situation it was at the time the status quo orders were made on 19.08.2024.
 - e. That after the committing for contempt, Defendant be sentenced to jail for a term of two years and a fine to the tune that the court may decide and be compelled to purge their contempt by restoring the subject premises to the status they were on before the day the contempt was committed.
 - f. Costs of this application.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavits sworn by Peter Gicira and Morris Mwasagua on 26.09.2024 and 26.08.2024 respectively. The plaintiffs stated that the defendant had violated the status quo order made on 19.08.2024 by, inter alia, by fraudulently creating parcel No. MN/VI/5139 out of the suit property; fencing part of the suit property using iron sheets; and hiring goons to threaten and inconvenience the plaintiffs. By a supplementary affidavit sworn by Irene Mueka on 08.11.2024 they contended that the defendant had through his agents, proxies or goons blocked some septic pipes from their toilets hereby causing raw sewage to flood their residences.

B. Defendant's response

3. The defendant filed a replying affidavit on 30.01.2025 denying the plaintiff's allegations of violation of the status quo order. He stated that he was the registered owner of parcel No.5139/VI/MN (parcel 5139) which was not the subject of the suit and that the suit property known as LR. No.3661/VI/MN (parcel 3661) belonged to Inland Beach Enterprises Limited. He denied having fraudulently acquired any portion of parcel 3361.
4. The defendant further pleaded that he had occupied parcel 5139 since 2000 and that it was the plaintiffs who had encroached upon it by destroying the iron sheets fence he had erected thereon. He denied having hired any goons or proxies as alleged by the plaintiffs and put them to strict proof thereof.
5. It was also the defendant's contention that the status quo order was ambiguous as it did not specify the property it related to or the status obtaining on the ground at the material time. The defendant thus considered the application to be malicious and prayed for its dismissal with costs.

C. Directions on submissions

6. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the plaintiffs filed written submissions dated 09.01.2025 whereas the defendant's submissions were dated 31.01.2025.

D. Issues for determination

7. The court has perused the plaintiffs' notice of motion dated 26.09.2024, the defendant's replying affidavit in opposition thereto, the plaintiffs' supplementary affidavit as well as the material on record. The court is of the view that the following are the main issues which arise for determination;
 - a. Whether the contempt alleged against the defendant has been proved to the required standard.
 - b. Whether the defendant should be committed to jail or fined for contempt of court.



- c. Whether the plaintiffs are entitled to the consequential orders sought.
- d. Who shall bear costs of the application.

E. Analysis and determination

- a. Whether the contempt alleged against the defendant has been proved to the required standard
8. The court has the considered the material and submissions on record on this issue. The plaintiffs submitted that the defendant had fraudulently acquired parcel 5139 out of parcel 3661 during the pendency of the status quo order. The evidence in support of this allegation was a letter dated 17.09.2024 from the office of regional surveyor – Coast indicating that a surveyor from the office shall visit the site of parcel 5139 to identify its boundaries.
 9. There is no indication in the said letter that parcel 5139 was being created for the first time after the issuance of the status quo orders. There was no indication in the said letter that parcel 5139 was curved out parcel 3661. The court is of the view that this issue can only be effectively resolved at the trial and not at this interlocutory stage. The court is thus not satisfied that the said allegation has been established.
 10. The court has also considered the allegation that the defendant had hired some goons or proxies to threaten and terrorize the plaintiffs on parcel 5139 and to block their sewer pipes. The court again finds no credible evidence on record of the alleged hiring of goons. It would appear that the plaintiffs had a reasonable suspicion that the defendant may have been responsible due to the instant dispute before court. The court takes the view that mere suspicion, however strong, is not sufficient to send a man to jail.
 11. The court has also considered the plaintiffs’ allegations that the defendant had erected a fence of iron sheets on the suit property and obstructed their right of way or freedom of movement. The court has noted that in his replying affidavit in opposition to the application the defendant deposed the he took occupation much earlier than the plaintiffs and that when the plaintiffs came over much later they destroyed his fence made of iron sheets. It is thus not clear whether the defendant was erecting a completely new fence or whether he was merely restoring what existed before.
 12. However, the greatest weakness of the plaintiffs’ application is that the status quo order of 19.08.2024 did not clarify what status was existing on the ground at the material time. There was no clear indication as to what the defendant was required to do or refrain from doing and in respect of what parcel number. The court agrees with the defendant that the interim order of 19.08.2024 was ambiguous and lacking in clarity bearing in mind the nature of the dispute and the circumstances of the case. Accordingly, the court is not satisfied that the plaintiffs have proved the contempt alleged against the defendant to the required standard.
 - a. Whether the defendant should be committed to jail or fined for contempt of court
 13. The court has found that the plaintiffs have failed to prove the contempt alleged against the defendant to the required standard. It would thus follow that there would be no legal basis for punishing the defendant for contempt of court.
 - a. Whether the plaintiffs are entitled to the consequential orders sought
 14. It is evident from the plaintiffs’ application that the consequential orders were predicated upon the allegation of contempt of court. That is why the plaintiffs sought an order for nullification of the



registration of parcel 5139 and the demolition of the iron sheet fence. The court having found that the allegation of contempt of court was not proved to the required standard then it would follow that the plaintiffs are not entitled to the consequential orders sought.

a. Who shall bear the costs.

15. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the defendant shall be awarded costs to the application.

F. Conclusion and disposal order

16. The upshot of the foregoing is that the court finds no merit in the plaintiffs' application for contempt of court. As a result, the notice of motion dated 26.09.2024 is hereby dismissed in its entirety with costs to the defendant.

Order accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 3RD DAY OF APRIL 2025.

.....

Y. M. ANGIMA

JUDGE

In the presence

Court assistant Gillian

Mr. Kioko for plaintiff

Mr. Asige for defendant

