



**Imathiu & 4 others v Land Adjudication and Settlement Officer Uringu –  
1, Adjudication Section & 5 others; Ratanya (Interested Party) (Petition  
5 of 2020) [2022] KEELC 13483 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13483 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**PETITION 5 OF 2020**  
**CK NZILI, J**  
**OCTOBER 12, 2022**  
**IN THE MATTER OF ALLEGED CONTRAVENTION OF**  
**FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 40 OF**  
**THE CONSTITUTION OF KENYA 2010**  
**AND**  
**IN THE MATTER OF ARTICLES 22 AND 23 AND 165 OF THE**  
**CONSTITUTION OF KENYA 2010**  
**AND**  
**IN THE MATTER OF SECTIONS 28 AND 29 OF THE LAND**  
**ADJUDICATION ACT CAP 284 LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF SECTION 26, 76 AND 80 OF THE LAND**  
**REGISTRATION ACT**  
**AND**  
**IN THE MATTER OF SECTION 7 OF THE LAND ACT NO. 6 OF 2012**  
**AND**  
**PET 5 OF 2020 - RULING1**  
**IN THE MATTER OF ENVIRONMENT AND LAND ACT 2011**

**BETWEEN**

**JOSEPH MURITHI IMATHIU ..... 1<sup>ST</sup> PETITIONER**

**ALDOSON B.K KARITHO ..... 2<sup>ND</sup> PETITIONER**



STEPHEN KABERIA ..... 3<sup>RD</sup> PETITIONER  
ROSE MWENDWA MUGAMBI ..... 4<sup>TH</sup> PETITIONER  
JOSHUA MURIIRA MITU ..... 5<sup>TH</sup> PETITIONER

AND

LAND ADJUDICATION AND SETTLEMENT OFFICER URINGU – 1,  
ADJUDICATION SECTION ..... 1<sup>ST</sup> RESPONDENT  
DISTRICT LAND REGISTRAR, TIGANIA DISTRICT ..... 2<sup>ND</sup> RESPONDENT  
DIRECTOR OF LAND ADJUDICATION ..... 3<sup>RD</sup> RESPONDENT  
DIRECTOR OF SURVEYS ..... 4<sup>TH</sup> RESPONDENT  
CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT

AND

DOMIZIANO M’CHOKERA RATANYA ..... INTERESTED PARTY

## RULING

1. This ruling relates to two applications dated November 12, 2020 and January 13, 2021 respectively.

### A. 1<sup>st</sup> Application

2. By an application dated November 12, 2020 the court is asked to order that the petitioners do comply with paragraph 1 of the court order issued on September 28, 2020 and remain in their respective parcels of land but not to purport to occupy and or build on the interested party’s parcel No. Nyambene/Uringu 1/3881. Further the court is asked to order that the petitioners removes and or demolishes all the structures that they have constructed on the interested party’s land together with all the building materials and cease further commercial activities thereof. Lastly the court is urged to order the OCS Nchiru police station to enforce the orders.
3. The application is supported by the grounds on its face and the affidavit of Domiziano Ratanya sworn on November 12, 2020. The reasons given are that the applicant is the registered owner of parcel No. Nyambene/Uringu 1/3881 which he gathered in 1967: the petitioners have their own parcels of land elsewhere and possess title deed(s) yet they are now interfering with the interested party’s land which is not even adjacent to theirs and have forcibly constructed timber kiosks and deposited building materials on the land with view of constructing more kiosks, shops, food stores and a car washing structure :that instead of undertaking the said activities on their parcels of land, the petitioners are interfering with his land as a strategy to grab it so that they can claim it ;that the issue of ownership of the land was decided in Meru HC JR 29 of 2018 which ordered the same to be heard afresh by the Land adjudication officer :that the petitioners are utilizing his land for commercial purposes yet it is an agricultural land without the change of user: that the petition is res judicata and the petitioners are using gangs of people to erect the said structures instead of maintaining the status quo as ordered by the court.



4. The application is opposed through a replying affidavit sworn by Joseph Murithi Imathiu, the 1<sup>st</sup> petitioner on January 20, 2021, for an on behalf of the other petitioners. The 1<sup>st</sup> ground is that Parcel No. 3881 came about through an alleged collusion, irregular and fraudulent consolidation of L.R No's 1740, 1276, 1940, 1821 & 1173 now renamed 3881, which the court in Meru Judicial Review No. 29 of 2008 quashed and the Land Adjudication Officer was stopped from implementing the decision thereof; that despite the decree the land adjudication officer proceeded to implement A/R Objection No. 832 and purported to issue the interested party with a title deed whose implications were the altering the aforesaid parcels of land and the creation of L.R No. 3881 whereas yet the situation on the ground remains the same.
5. Further the petitioners averred that this court issued orders in September 2020 stopping any interference of their parcels of land by the interested party and the respondents. The petitioners averred that they are on their rightful parcels of land and not on the interested party's land, which they have been occupying for decades and the only conflict was over the allegedly or fraudulently altered land records and the noncompliance with the decree in Meru Judicial Review No. 29 of 2008 by both the respondents and the interested party.
6. The petitioners stated that the petition was not *res-judicata* given the previous suit was a judicial review otherwise the orders issued on December 8, 2020 should be vacated in view of the previous orders of September 29, 2020.

#### **B. 2<sup>nd</sup> Application**

7. In the 2<sup>nd</sup> application the court is asked to find the petitioners in contempt of the orders made on September 28, 2020 and December 2, 2020, respectively; commit them to civil jail; issue an eviction order from L.R. No. Nyambene/Uringu/3881 and lastly order for the demolition of all the buildings or structures erected therein by the petitioners.
8. The application is based on the reasons on its face and an affidavit sworn by Domiziano M. Ratanya on January 13, 2021. The interested party states that an order for the maintenance of status quo was issued on September 28, 2020 and confirmed again on December 2, 2020. That instead of complying with the two orders, the petitioners have constructed on the interested party's land and were now carrying out commercial activities therein in flagrant disobedience said court orders, which undermines the dignity of this court. The interested party relies on a copy of the title deed issued on March 17, 2016 and a sketch map.
9. The application has been opposed through a replying affidavit of Joseph Murithi, Imathiu sworn on June 6, 2021 on behalf of the petitioners on the basis that the orders complained above were to the effect that the petitioners who have been in possession of the suit land for decades do continue in possession. That their permanent buildings for decades were in place which fact was confirmed by the site visit report. That the orders issued subsequently were mischievous hence the reason they were vacated since there were no fresh structures or developments in place. That the title deed was allegedly obtained despite an existing court order. That no contempt of court has been proved since they have complied with the court orders.

#### **C. Determination**

10. The court has gone through the pleadings, the two applications and the replies thereto. The issues for determination are: - whether the petitioners have gone against the temporary orders issued on September 28, 2020 and secondly if the applicant in the two applications is entitled to the prayers of both compliance and contempt of court.



11. It is not in dispute that the petitioners filed a petition dated April 15, 2020 which was accompanied by a notice of motion seeking for temporary orders of injunction. The interested party responded to the application by a replying affidavit sworn on June 19, 2020 on the grounds that the 1<sup>st</sup> petitioner was not party to the Meru Judicial Review No. 43/2008 and Judicial Review 36/008 brought by the 5<sup>th</sup> petitioner, which determined the issues herein and therefore that his title deed was legally issued. Further he stated that the respondents were served with the petition and the application and an affidavit filed on June 22, 2020 and September 20, 2020.
12. On September 28, 2020 the application came up for hearing where the petitioners were represented by Mr. Maranya advocate, Mr. Kiango learned state counsel appeared for the 1-6<sup>th</sup> respondents while Mr. Sandi advocate appeared for the interested party.
13. Mr. Kiango informed the court that a committee had been constituted and proposed that the status quo be maintained which he clarified to mean that no subdivisions or disposal of the suit land should occur. Mr. Sandi and Mr. Maranya agreed with that proposal.
14. Consequently, by consent of parties, the court ordered that the status quo in terms of prayer No. 4 in the application dated April 15, 2020 be maintained until the petition is heard and determined. Parties were ordered to comply with Order 11 *Civil Procedure Rules* and the application dated April 15, 2020 was marked as settled.
15. Following the filing of an application dated November 12, 2020, parties appeared before the court on January 21, 2021 and order was made for a scene visit to define the nature and the extent of the status quo on the ground in terms of who was in occupation and what developments existed thereon. The court ordered the status quo as at September 28, 2020 to subsist.
16. During the scene visit it was established that the: - 1<sup>st</sup> petitioner occupied LR No. 1940 with 6 rental rooms made of wood and iron sheets plus a pit latrine; 2<sup>nd</sup> petitioner occupied L.R No. 1740 with three permanent rooms, welding shop, car shed/garage, poultry house, watchman house and an all-round iron sheet made fence; 3<sup>rd</sup> petitioner occupied L.R 1276 with a wooded kiosk, poultry house and a workshop; the 4<sup>th</sup> petitioner occupied L.R No. 1173 with an operational timber yard while the 5<sup>th</sup> petitioner occupied L.R No. 1871 with an operational car wash, iron sheet made hotel, a permanent commercial building, several shops and a butchery.
17. The interested party through the two applications is complaining that the petitioners have gone against the order made on September 28, 2020 and has urged the court to cite and or proceed to punish the petitioners for contempt of court, order for the eviction and demolition of all buildings and structures erected on the suit land.
18. Looking at the court file, it is quite apparent that the respondents and the interested party are yet to respond to the petition and set out their version of facts. This is despite orders to comply with Order 11 of the *Civil Procedure Rules* so that the matter can proceed for hearing.
19. The respondents through their counsel on record made a clarification on what in their view was the status quo and which apparently both the petitioners and the interested party agreed with and confirmed as the position.
20. When it came to the extraction of the court order dated September 29, 2020, the status quo to be maintained was not defined at all. Instead, whoever extracted the order included matters which went beyond what was envisaged in the consent read out to court. This perhaps the reason why the court had to make an order for a scene visit report.



21. The main complaint by the petitioners in this application was that despite the decree issued on September 4, 2018 in Meru ELC JR 29 of 2008, the respondents disregarded it and proceeded to issue the interested party with a title deed for LR No. 3881 amalgamating their parcel No's 1740, 1276, 1821, 1173 and renaming them as L.R 3881.
22. On the other hand, the interested party while opposing the application dated April 15, 2020 took the view he had been lawfully and or legally demarcated his land under the [Land Consolidation Act](#) and eventually issued with a title deed dated March 17, 2016.
23. Given the rival positions taken by the parties, it is evident that as at March 2016, the interested party's land was governed by the [Land Registration Act](#) and not both the Land Consolidation or the [Land Adjudication Act](#).
24. The implications are that at the time the decree was issued on 4.9.2018 in JR No. Meru ELC No. 29 of 2008, title to land had passed to the interested party. The petitioners have not told this court if there was already a stay of the proceedings and implementation of the decision in A/R objection No. 832. The 1<sup>st</sup> and 3<sup>rd</sup> respondents have not clarified the position of the suit parcels of land as at the time the decree was issued. The 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents have also not confirmed if Parcel No's 1740, 1276, 1821, 1173, 1940 & 1173 existed in their land records and what their relationship is with L.R No. 3881.
25. More importantly the petitioners have not supplied to this court any ownership documents over the parcels of land they claim to be occupying.
26. As at the time the order of the status quo was made the 1<sup>st</sup> – 6<sup>th</sup> respondents counsel on record mentioned that there was a committee in place to undertake some activity related to the Suitland. This is what informed the court to make the order of the maintenance of the status quo.
27. Due to the foregoing, the petitioners and the interested party are blaming each other for non-compliance with the order of status quo yet none at the time the order was defined the status quo and or clarified who was on the ground and the nature of the developments existing at the time, until the order had to be made for the scene visit.
28. As indicated above, the respondents and the interested party are yet to respond to the factual, statutory and constitutional basis of this petition.
29. The two applications by the interested party seek drastic orders of eviction and or demolition of the developments on the Suitland alleged to be on the interested party's land. The date of, nature and status of the structures have not been specified in the supporting affidavit and so is the manner in which the petitioners have gone against the order made on September 29, 2020. The date of the service of the court order is unclear. A penal notice is also lacking in the said order.
30. A party seeking for contempt and punishment for cot must establish the service of the order, awareness of the same, clarity of the order and prove the manner of the disobedience.
31. In [Shimmers Plaza Ltd vs NBK](#) (2015) eKLR, the court said that the knowledge of the order by the contemnors advocates on record was enough since a lawyer is presumed to be seized of full instructions and to be reporting back to the client all what has transpired before court.
32. In [TSC vs KNUT and 2 others](#) (2013) eKLR, the court said that the reason contempt of court exists is to safeguard the rule of law in the administration of justice while in [Econet Wireless \(K\) Ltd vs Minister for Information & Construction](#) (2005) 1KLR 828, the court held that the authority and dignity of the court must be held at all times and that the court will not condone a deliberate disobedience of its orders.



33. In *Cecil Miller vs Jackson Njeru* (2017) eKLR, the court set out certain elements to be proved for contempt of court which include: that the order was clear and unambiguous; was binding on the defendant; the defendant had knowledge or proper notice of the terms and has acted in breach of the terms in a conduct which was deliberate.
34. The Court of Appeal in *Michael Sistu Mwaura Kamau vs DPP & 4 others* (2018) eKLR, restated the essential elements to be satisfied especially the willful and deliberate disobedience of the order. The court cited with approval *Republic vs Ahmed Abolfathi Mohamad & another* (2018) eKLR, and *Jihan Freighters Ltd vs Hardware & General Stores Ltd* (2015) eKLR, where it was held that the order must be precise and clear so as to leave no doubt as to what each party was supposed to do or refrain from doing and that the standard of proof is higher than proof on a balance of probabilities.
35. Applying the principles derived from the foregoing authorities, it is my considered view that the consent order herein was not clear, had some ambiguity, was not served upon the petitioners in person and the alleged acts of breach have not been particularized. Consequently, I find the two applications lacking merits. The same are hereby dismissed with costs.
36. Meantime and given the foregoing, the respondents, interested party and the petitioners are hereby granted 45 days from the date hereof to file any responses to the petition. The petitioners, are granted a corresponding leave to file a supplementary affidavit, if need be, within 7 days upon service by the respondents and the interested party.
37. Mention for directions on the mode of disposal of the petition shall be on November 29, 2022.  
Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 12<sup>TH</sup> DAY OF OCTOBER, 2022**

In presence of:

Kitheka holding brief for Maranya for petitioner

Miss Mugambi for Kieti for respondents

Interested party in person

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**

