



Kiti v Halal & 3 others; Mwikai (Applicant) (Environment & Land Case 126 of 2014) [2022] KEELC 15028 (KLR) (22 November 2022) (Ruling)

Neutral citation: [2022] KEELC 15028 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 126 OF 2014
NA MATHEKA, J
NOVEMBER 22, 2022**

BETWEEN

JUSTIN MWACHIRO KITI PLAINTIFF

AND

LEWA ZIZO 1ST RESPONDENT

NARAN RAMJI HALAL 2ND RESPONDENT

GABRIEL KITI CHONGA 3RD RESPONDENT

MWATSUMA KENYATTA 4TH RESPONDENT

AND

PAUL MWAKAI APPLICANT

RULING

1. The application is dated 24th February 2022 and is brought under Order 51 Rule 1, of the [Civil Procedure Rules](#) 2010 and Section 1A, 1B & 3A of the [Civil Procedure Act](#) and all other enabling laws of Kenya and seeks the following orders;
 1. That the Application be certified as urgent and service be dispensed with in the first instance.
 2. That this Honourable Court be pleased to amend its order issued on 5th July, 2021, specifically order number 3 of the said Order.
 3. That order number 3 of the said order be addressed to Officer Commanding Police Station Chasimba Police Station instead of Officer Commanding Police Station Chonyi Police Station.
 4. That costs of this application be provided for.



2. It is supported by the supporting affidavit of Justin Mwachiro Kiti and grounds that the Honourable Court issued orders warranting the arrest and production of the Respondents before court for them to show cause why they should not be committed to jail as well as eviction orders against the same Respondents. Order number 3 of the said orders, which were issued on 5th July, 2021 required the Officer Commanding Chonyi Police Station to effect enforcement of the order. The Applicant has however not been able to have the order enforced because the Respondents reside in Chasimba, outside the jurisdiction of the Officer Commanding Chonyi Police Station. For the reason that the Respondents are within Chasimba region, which now has a Police Station, it is convenient for the Officer Commanding Chasimba Police Station to effect the order as it is within his/her jurisdiction.
- That it is in the interests of justice that the sought orders be granted. This court has considered the application. The Applicant prays for court to amend Order 3 of the prayers issued on 5th July 2021 to read Officer Commanding station Chasimba police station instead of Officer Commanding station Chonyi police station. The said orders were issued on 5th July 2021 pursuant to the Applicant's application dated 8th March 2021, Order 3 stated;

That the Officer Commanding Police Station Chonyi Police Station is hereby instructed to effect the enforcement of this order.”

3. The Applicant deponed that the OCS Chonyi Police Station has been unable to enforce the said orders since the Respondents are in Chasimba outside the jurisdiction of Chonyi police station. The Applicant prayed for court to amend the orders and direct them to OCS Chasimba police station where the respondents resides.
4. Upon perusing the orders that were issued on 5th July 2021 I do note that they were issued pursuant to an application dated 8th March 2021 brought by counsel for the Applicant. On further perusal I find the application dated 8th March 2021 sought similar orders as this present application. The orders sought were to amend Order 3 of the orders issued on 28th October 2014, to be addressed to OCS Chonyi police station as opposed to OCS Kilifi police station. Onto the orders issued on 28th October 2014 they were pursuant to an Amended Chamber Summons dated 17th March 2014.
5. Section 99 of the *Civil Procedure Act* empowers court to amend orders, it provides:-
- Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”
6. The application was not opposed, consequently the Notice of Motion dated 24th February 2022 is merited and I grant the same with no orders as to costs as it was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 22TH DAY OF NOVEMBER 2022.

N.A. MATHEKA

JUDGE

