



REPUBLIC OF KENYA



**Maji Moto Group Ranch & 10 others v Matunke & 14 others; Sankale
& 4 others (Interested Parties) (Environment & Land Petition
268 of 2017) [2022] KEELC 14800 (KLR) (15 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14800 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND PETITION 268 OF 2017
CG MBOGO, J
NOVEMBER 15, 2022**

BETWEEN

**MAJI MOTO GROUP RANCH 1ST PETITIONER
T WALA MANKI 2ND PETITIONER
KILETIA SAYIALEL 3RD PETITIONER
SIMON MAISON TONGOYO 4TH PETITIONER
NAGIYO MEIKWAYA 5TH PETITIONER
PARMMOIS NASI 6TH PETITIONER
MEPUKORI NYAYIA 7TH PETITIONER
NCHAO SIOLOLO 8TH PETITIONER
TOPOIKA NTOKOIWUAN 9TH PETITIONER
TIMAYIO TIKANI 10TH PETITIONER
TIAPUKEL NANTEYA 11TH PETITIONER**

AND

**MAYONE DAVID MATUNKE 1ST RESPONDENT
JAMES PASHAMAI AHIRE 2ND RESPONDENT
SENET RIAMIT 3RD RESPONDENT
MAINKA MUNTET 4TH RESPONDENT
TUMATE PARMUAT 5TH RESPONDENT
SALANKAT MERKU 6TH RESPONDENT**



NGERE MOROMBA 7TH RESPONDENT
ORKUNEE NKONG’ONI 8TH RESPONDENT
PATRICK KIMURSOI 9TH RESPONDENT
DAVID NANTEYA 10TH RESPONDENT
DISTRICT LAND REGISTRAR 11TH RESPONDENT
DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER 12TH
RESPONDENT
MINISTRY OF LANDS, URBAN & PHYSICAL PLANNING 13TH
RESPONDENT
ATTORNEY GENERAL 14TH RESPONDENT
NATIONAL LAND COMMISSION 15TH RESPONDENT

AND

OLONANA OLE SANKALE INTERESTED PARTY
REBECCA PEIYIAI KUDATE INTERESTED PARTY
LEITA OLE YENKO INTERESTED PARTY
EQUITY BANK (K) LIMITED INTERESTED PARTY
OMNIVENTTURES LIMITED INTERESTED PARTY

RULING

1. Before this court for determination is a notice of preliminary objection dated August 19, 2022 filed by the petitioners in challenging the notice of motion application dated August 3, 2022 on the following grounds: -
 1. That the application is a non-starter, bad in law, frivolous, an abuse of the court process as it offends the mandatory provisions of Section 77 of the *Civil Procedure Act* and ought to be dismissed.
 2. That the firm of Karanja-Mbugua & Company Advocates who have filed both applications for stay on behalf of the 1st-10th respondents did so without an order of the court allowing them to come on record upon an application with notice to all parties or a consent between themselves and the outgoing Advocates contrary to the provisions of Order 9 Rule 9 of the *Civil Procedure Rules*.
 3. That there are pending notice of motion applications dated July 22, 2022 and July 28, 2022 respectively brought under Order 42 Rule 6 (1) and (2) on the same subject matter.
 4. The respondents/applicants are estopped by the principle of issue estoppel from filing another application for stay where there is already a pending identical application and orders thereto.
 5. Other grounds and reasons as may be adduced at the hearing thereof.



2. The 1st respondent filed an affidavit in response to the preliminary objection sworn on October 1, 2022. The 1st respondent deposed that the 1st point of the preliminary objection is misconceived and inapplicable in that Section 77 of the *Civil Procedure Act* does not apply in the instant case. Further, that the firm of M/s Karanja Mbugua & Co. Advocates and the firm of M/s J.A Simiyu & Company Advocates entered into a consent on July 12, 2022 and paid for the same on July 21, 2022. The 1st respondent further deposed that the consent was filed simultaneously with the notice of motion and notice of change of advocates on July 21, 2022 and that the 2nd notice of motion dated August 3, 2022 was occasioned by the subsequent actions of the petitioners extracting a decree in violation of Order 21 Rule 8 (2) of the *Civil Procedure Rules* which is a distinct cause of action from the notice of motion dated 22nd July, 2022. In conclusion, the 1st respondent deposed that the preliminary objection does not meet the threshold as in the case of *Mukhisa Biscuits Limited versus Westend Distributors Limited* [1969]EA 696.
3. The petitioners filed written submissions dated September 14, 2022. The petitioners raised three issues for determination as follows: -
 - i. Whether the application made is frivolous, bad in law, an abuse of the court process.
 - ii. Whether the court has jurisdiction to hear and determine the application dated August 3, 2022.
 - iii. Whether the respondents' advocates were properly on record at the time of filing the application.
4. On the first issue, the petitioners submitted that the respondents' remedies only lie in making an appeal and not in filing numerous applications and the respondent's application dated August 3, 2022 failed to disclose that there were two previous applications, one filed by themselves touching on the same issue of stay of judgment and decree. The petitioners relied on the case of *Beatrice Kwamangala Kutondo versus Peter Itumo Pius Ngove & Another*, [2021] eKLR. The petitioners submitted that the respondents' actions could very well be interpreted as forum shopping in a bid to circumvent the set laws and procedure. The petitioners rely on the cases of *Mechtilda Imbogo versus Christine Makokha Imbogo* [2021] eKLR and *Republic versus Paul Kihara Kariuki, Attorney General & 2 others ex-parte Law Society of Kenya* [2020] eKLR.
5. On the second issue, the petitioners submitted that the *ex-parte* orders delivered on July 25, 2022 was set aside on July 29, 2022 and subsequently discharged for material non closure which is not procedural. The petitioners submitted that the court having set aside the order it first issued on July 26, 2022, the next remedy to be sought lay in an appeal and the court therefore lacks jurisdiction to hear and determine the application dated August 3, 2022. The petitioners relied on the cases of *Owners of the Motor Vessel "Lillian S" versus Catlex Oil (Kenya) Limited, Samuel Kamau Macharia & Another versus Kenya Commercial Bank Limited & 2 others* [2012]eKLR, *Speaker of the National Assembly versus James Njenga Karume* [1992] eKLR and *John Gilbert Ouma versus Kenya Ferry Services Limited* [2021]eKLR.
6. On the third issue, the petitioners submitted that the respondents have not complied with Order 9 Rule 9 of the *Civil Procedure Rules* on legal representation. The petitioners relied on the cases of *Aggrey Ndombi & Another versus Grace Ombara* [2008] eKLR, *John Langat versus Kipkemoi Tere & 2 others* [2013] eKLR.
7. The respondents filed written submissions dated October 10, 2022. The counsel for the respondent submitted that before they came on record on behalf of their clients, they first sought consent of the previous advocates and which was granted in writing and filed in court and therefore the preliminary



- objection is misconceived. The respondents submitted that the other grounds raised in the preliminary objection are not pure points of law and ought to be disallowed.
8. I have carefully analysed and considered the preliminary objection, replies and the written submissions filed by both parties and the issue for determination is whether the firm of Karanja Mbugua & Company Advocates is properly on record for the respondents.
 9. The definition of a Preliminary Objection was well set out in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors ltd* (1969) EA 696. It was stated: -
“... a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”
 10. In my view and after careful analysis of the preliminary objection the only issue that qualifies for consideration is ground number 2. Order 9, rule 9 of the [Civil Procedure Rules](#) provides as follows;
“When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—
 - (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing Advocate and the proposed incoming Advocate or party intending to act in person as the case may be.”
 11. Order 9, rule 10 of the [Civil Procedure Rules](#) further provides;
“An application under rule 9 may be combined with other prayers provided the question of change of Advocate or party intending to act in person shall be determined first.”
 12. Article 159 of [the Constitution](#) and the overriding objective of the [Civil Procedure Act](#) under Section 1A of the Act, read with the duty of the court under Section 1B of the [Civil Procedure Act](#) mandates the court to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. Section 1A (3) places a duty on parties to civil proceedings or their advocates to give effect to the overriding objective of the [Civil Procedure Act](#) and to participate in court processes. It is only then can the court attain the aims bestowed upon it by Section 1B of the Act of the just determination of proceedings, the efficient and timely disposal of its business and the efficient use of the available judicial resources.
 13. In addition, Section 3A of the [Civil Procedure Act](#) provides: - “Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.” Being mindful of the import of the above cited provision of the law, this court has power to exercise discretion within the confines of the law to ensure that no party is removed from the seat of justice. The underlying concern in both applications being that of legal representation of both parties by Advocates on record. This court is of the view that parties regularise their appearance first before any other issues are determined.
 14. As such, the notice of preliminary objection dated August 19, 2022 is hereby dismissed with no orders as to costs. I hereby direct both parties to regularize their appearance within the next 21 days from the date of this ruling. Mention on December 5, 2022 for further directions. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 15TH DAY OF NOVEMBER, 2022.

HON. MBOGO C.G.



JUDGE

15/11/2022.

In the presence of:-

CA:Chuma

