



Motor Farmers Co-operative Society Limited v Chelule & 6 others (Enviromental and Land Originating Summons E001 of 2020) [2025] KEELC 3668 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3668 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2020**

A OMBWAYO, J

MAY 8, 2025

BETWEEN

MOTOR FARMERS CO-OPERATIVE SOCIETY LIMITED PLAINTIFF

AND

PETER CHELULE 1ST DEFENDANT

ELIZABETH WANGUI NJENGA & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS 2ND DEFENDANT

RULING

1. The 2nd to 5th defendants have come to this court seeking an order that the ex-parte judgment dated 30th October 2024 be set aside and the 2nd- 7th defendant be granted an opportunity to defend the suit by way of Viva Voce evidence and submissions. The application is made on grounds that the Plaintiff/Respondent obtained an ex-parte judgment herein on 30th October, 2024. The 2nd to 7th Defendants/Applicants have only come across the court decree dated 24th January 2025. The 2nd to 7th Defendants did not have an opportunity to lead viva-voce evidence in the suit herein. The 2nd to 7th Defendants did not have an opportunity to file submissions in this matter. The Defendants did not have an opportunity to avail their evidence in this matter. The 2nd to 7th Defendants were not properly served to appear to lead their evidence. The 2nd to 7th defendants were not properly served to lodge their submissions in the matter.
2. The suit herein sought to enforce judgment in Nakuru High Court Civil case no 95 of 2015 by Honorable Justice Rachael Ngetich on the 11th July 2019. The said judgment subject to an appeal being Nakuru Court of Appeal Civil Appeal; No.81 of 2021. The matter should have been stayed pending hearing and determination of Nakuru Court Appeal Civil Appeal No 81 of 2021 over the same subject matter. There is danger of deferring pronouncements in this matter and the pronouncement by Court of Appeal in Nakuru Court of Appeal Civil Appeal No. 81 of 2021 over the



same subject matter. Plaintiff/Respondent is in the process of executing the ex-parte judgment dated 30th October 2024.

3. The 2nd to 7th Defendants face-imminent, eviction without a hearing and the substratum of the suit herein being land parcel Grant No. IR. 9716 LR. No.533/87/11 will be lost unless stay orders are granted. It is only appropriate that the application herein be granted and parties allowed a property hearing.
4. The supporting affidavit reiterates the grounds of the application.
5. The plaintiff filed a replying affidavit wherein he states that the instant Application has been made by a firm of Advocates i.e Murimi, Mbago & Muchela Advocates who are not properly on record considering that the firm of Murimi, Ndumia & Mbago Advocates have been acting for the Applicants up to the point of judgment. Therefore, the said application is incompetent and ought to be struck out.
6. Secondly, the application at hand is filed after an inordinate and unexplained delay of approximately 119 days considering that the Judgment was delivered on the 30th October 2024 and this Application is filed on or about the 25th February 2025.
7. Third, the judgment delivered by this Honorable Court cannot be termed as ex-parte considering that the Applicants participated in these proceedings and received several notices on the same. The counsel for the Applicants was notified of the directions taken to canvass the Originating Summons as well as the Judgment date vide an e-mail sent on the 7th May 2024 which the said firm acknowledged receipt.
8. It can be gleaned from the foregoing that the Applicants willfully chose not to comply with the said directions and thus are the able architects of their own misfortune. Further, on the 4th October 2024, the Deputy Registrar of this Honorable Court notified the Applicant's counsel as well as counsel for the respondent that the delivery of the judgment had been rescheduled to the 9th October 2024 and the Applicants' counsel acknowledged receipt of the said notice. On the 11th October 2024, Deputy Registrar of this Honorable Court notified the Applicant's counsel as well as their counsel that the delivery of the Judgment had been rescheduled to the 16th October 2024. The Applicants have thus been led to commit the offence of perjury by stating under oath that they were not served with the necessary notices and ought to be punished for the said offence. Fourth, as to the claim that there exists an appeal over the same subject matter being Nakuru Civil Appeal No E081 of 2021, once more, the Applicants have perjured themselves for reasons that the said Appeal was struck out by a three-judge bench of the Court of Appeal on the 3rd November 2022. Should the Applicants' be tempted to feign ignorance of the same, it is noted in the ruling that they were represented during the hearing of the said Application by their counsel Ms. Kamau and further that the Deputy Registrar of the Court of Appeal notified the parties of the delivery of the ruling in question vide an email dated 2nd November 2022 to which the Applicants' counsel acknowledged receipt. The above exposition exposes the falsehoods that make up the foundation of the Application at hand and therefore, it must collapse under its own weight. Finally, the respondents have already executed the terms of the judgment of this Honorable Court by successfully taking possession of the suit property which they are now actively renovating and further, they have filed a Party and Party Bill Of costs dated the 20th February 2025 which is pending taxation.
9. This court has carefully considered the application on record dated 9th February 2025 and the replying affidavit together with the rival submissions and does find that the application is not properly before court as the firm of Murimi Mbago and Muchela advocates did not apply to come on record in the place of Murimi, Ndumia and Mbago advocates.



10. Order 9, Rule 9 of the Civil Procedure Rules in Kenya pertains to the notice of appointment of an advocate. It states that if a party, after having sued or defended in person, appoints an advocate to act on their behalf, they must give notice of the appointment. The provisions related to a notice of change of advocate apply to a notice of appointment of an advocate with necessary modifications. Order 9 rules 9 of the Civil Procedure Rules provide as follows that 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 upon an application with notice to all the parties or 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. Moreover, the application is filed after inordinate delay of more than 100 days after judgment. The applicant was aware of the directions of the court via email and therefore cannot state that he was not served with the directions. There is no dispute that the judgment has already been executed and therefore the application is moot. I do find the application without merit and the same is dismissed with costs.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

