



REPUBLIC OF KENYA



KENYA LAW

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Kiarie v Toyianka; Parsere & another (Interested Parties) (Suing as Administrators of the Estate of Peter Parsere Saire - Deceased) (Land Case E006 of 2025) [2025] KEELC 4937 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4937 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
LAND CASE E006 OF 2025
LC KOMINGOI, J
JULY 3, 2025

BETWEEN

NDUNGU KIARIE PLAINTIFF

AND

YIANGASO OLE TOYIANKA DEFENDANT

AND

PENINAH SEKENET PARSERE INTERESTED PARTY

DIANA SOKOINE MELITA INTERESTED PARTY

SUING AS ADMINISTRATORS OF THE ESTATE OF PETER PARSERE SAIRE - DECEASED

RULING

1. Before this court for determination are four Applications. The Notice of Motion dated 10th January 2025, 7th February 2025 and 28th February 2025 all filed by the Plaintiff/Applicant. There is also the Notice of Motion dated 14th February 2025 filed by the Defendant.
2. The Notice of Motion dated 10th January 2025, is brought under; Article 159 [2] [d] of *the Constitution*; Section 1A, 1B and 3A of the *Civil Procedure Act*; Order 40 Rule 1 and 2 of the Civil Procedure Rules; Section 3 and Section 13 of the *Environment and Land Court Act*; Section 76 of the *Land Registration Act*; Practice Directions on Proceedings in the Environment and Land Court in Gazette Notice 5178 dated 25th July 2014 and all other enabling provisions of the law.. It seeks:
 - i. Spent;



- ii. An order of injunction be issued restraining the Defendant whether by himself or through any person whomsoever from interfering with the properties known as Title number; Kajiado/Olchoro-Onyore/39644, Kajiado/Olchoro-Onyore/39645, Kajiado/Olchoro-Onyore/39646, Kajiado/Olchoro-Onyore/39647, Kajiado/Olchoro-Onyore/39648, Kajiado/Olchoro-Onyore/39649, Kajiado/Olchoro-Onyore/39650, Kajiado/Olchoro-Onyore/39651, Kajiado/Olchoro-Onyore/39652, Kajiado/Olchoro-Onyore/39653, Kajiado/Olchoro-Onyore/39654, Kajiado/Olchoro-Onyore/39655, Kajiado/Olchoro-Onyore/39656, Kajiado/Olchoro-Onyore/39657, Kajiado/Olchoro-Onyore/39658, Kajiado/Olchoro-Onyore/39659 and Kajiado/Olchoro-Onyore/39660 each measuring approximately 0.09Ha by surveying, sale, transfer, construction, wastage, amalgamation, disposal, cultivation, taking occupation, leasing out or by any other means whatsoever and howsoever pending the hearing and determination of this Application.
- iii. An order of injunction be issued restraining the Defendant whether by himself or through any person whomsoever from interfering with the Properties known as Title number Kajiado/Olchoro-Onyore/39644, Kajiado/Olchoro-Onyore/39645, Kajiado/Olchoro-Onyore/39646, Kajiado/Olchoro-Onyore/39647, Kajiado/Olchoro-Onyore/39648, Kajiado/Olchoro-Onyore/39649, Kajiado/Olchoro-Onyore/39650, Kajiado/Olchoro-Onyore/39651, Kajiado/Olchoro-Onyore/39652, Kajiado/Olchoro-Onyore/39653, Kajiado/Olchoro-Onyore/39654, Kajiado/Olchoro-Onyore/39655, Kajiado/Olchoro-Onyore/39656, Kajiado/Olchoro-Onyore/39657, Kajiado/Olchoro-Onyore/39658, Kajiado/Olchoro-Onyore/39659, Kajiado/Olchoro-Onyore/39660 each measuring approximately 0.09Ha surveying, sale, transfer, construction, wastage, amalgamation, disposal, cultivation, taking occupation, leasing out or by any other means whatsoever and howsoever pending the hearing and determination of the Suit filed together with the Application.
- iv. An order of inhibition be registered in respect of the Title to the Properties known as Title number Kajiado/Olchoro-Onyore/39644, Kajiado/Olchoro-Onyore/39645, Kajiado/Olchoro-Onyore/39646, Kajiado/Olchoro-Onyore/39647, Kajiado/Olchoro-Onyore/39648, Kajiado/Olchoro-Onyore/39649, Kajiado/Olchoro-Onyore/39650, Kajiado/Olchoro-Onyore/39651, Kajiado/Olchoro-Onyore/39652, Kajiado/Olchoro-Onyore/39653, Kajiado/Olchoro-Onyore/39654, Kajiado/Olchoro-Onyore/39655, Kajiado/Olchoro-Onyore/39656, Kajiado/Olchoro-Onyore/39657, Kajiado/Olchoro-Onyore/39658, Kajiado/Olchoro-Onyore/39659 and Kajiado/Olchoro-Onyore/39660 each measuring approximately 0.09Ha pending the hearing and determination of this Application.
- v. An order of inhibition be registered in respect of the Title to the properties known as Title Kajiado/Olchoro-Onyore/39644, Kajiado/Olchoro-Onyore/39645, Kajiado/Olchoro-Onyore/39646, Kajiado/Olchoro-Onyore/39647, Kajiado/Olchoro-Onyore/39648, Kajiado/Olchoro-Onyore/39649, Kajiado/Olchoro-Onyore/39650, Kajiado/Olchoro-Onyore/39651, Kajiado/Olchoro-Onyore/39652, Kajiado/Olchoro-Onyore/39653, Kajiado/Olchoro-Onyore/39654, Kajiado/Olchoro-Onyore/39655, Kajiado/Olchoro-Onyore/39656, Kajiado/Olchoro-Onyore/39657, Kajiado/Olchoro-Onyore/39658, Kajiado/Olchoro-Onyore/39659 and Kajiado/Olchoro-Onyore/39660 each measuring approximately 0.09Ha pending the hearing and determination of the Suit filed together with this Application.
- vi. An order of inhibition be registered in respect to the transfer of the Motor Vehicle KDE 686G Toyota Prado barring the defendant by himself or through a third party from sale, transfer, disposal or leasing out of the said Motor Vehicle.



- vii. An Order to the OCS Kiserian Police Station to impound the said Motor Vehicle KDE 686G Toyota Prado, pending hearing and determination of the suit.
 - viii. Any further or other orders as the Honourable Court may deem fit.
 - ix. Costs of the Application to be borne by the Defendant.
3. The grounds are on the face of the application. The same is supported by the Affidavit of Ndung'u Kiarie sworn on the 10th January 2025.
 4. He claims that he entered into an agreement with the Defendant for sale of property Kajiado/ olchoro Onyore/38653 measuring approximately 1.63 Ha on the 18th April 2023. He paid Kshs. 12,000,000 for the property as follows: Kshs. 8,000,000 was paid in form of a Toyota Prado KDE 686G, 2019 model and Kshs. 4,000,000 was paid in cash.
 5. He avers that he transferred the said motor vehicle as per the agreement to the defendant, Yiangaso Ole Toyianka, paid the stamp duty and other requisite fees for registration. The parcel was then transferred to his name. In August 2023 he sub-divided the property into seventeen [17] portions measuring 0.09 hectares for commercial purposes. He intended to sell the sub-divided plots at Kshs. 1,500,000 each, totalling to Kshs. 25,500,000.
 6. On or about July 2024 he visited the suit properties and found the access road blocked. He claims that upon enquiry, he was informed that one, Peninah Sekenet Parsare [the 1st interested party] was responsible. He stated that he was also informed that she was the sister in law of the defendant.
 7. In August 2024 he was served with Pleadings in ELC E025 of 2024 cited as the 2nd interested party by virtue of purchase of Kajiado/ olchoro Onyore/38653. The 1st Interested party herein, Peninah Sekenet Parsare, is the Plaintiff in that suit suing the Defendant for fraudulently transferring amongst others, Kajiado/ olchoro Onyore/38653 to himself and subsequently selling off the same to the Plaintiff. Upon receipt of the said pleadings, he instructed his advocates on record. There was an attempt of an out of court settlement which did not bear fruit.
 8. He claims that as a result of that suit, he and/or his potential clients can neither access the property nor utilise it for commercial gain. He has consequently suffered irreparable harm while the Defendant continues to enjoy use of the Motor vehicle and/or purchase price paid while he has been unable to actualize the property for commercial gain. He prays that the orders sought be granted.
 9. The Defendant Yiangaso Ole Toyianga in his Replying Affidavit, acknowledged that they had an agreement with the Plaintiff for the sale of the suit property, and the plaintiff traded in Motor Vehicle Registration number KDE 686G and paid Kshs. 4,000,000 in cash amounting to Kshs. 12,000,000 which was the agreed purchase price.
 10. He states that on 15th July 2022, the suit property known as Kajiado/Olchoro Onyore/30651 was subdivided by the previous owner, Peter Parsere Saire [Deceased] resulting in the transmission of interest in Kajiado/Olchoro Onyore/37393 measuring 5.06 Ha to him. Thereafter, the deceased and executed a transfer agreement on 31 August 2022 for Kajiado/Olchoro Onyore/37393 and a title deed issued in his favour. This transfer was undertaken legally with consent and he had rights and capacity to transfer the property to the Plaintiff without encumbrances. He claimed that this suit and application was therefore premature because the suit in Kajiado ELC E025/2024 was pending which was to determine his capability in passing good title to the plaintiff. He depones that it would therefore, be unjust and punitive for the court to grant orders affecting the defendant's personal use



and enjoyment of motor vehicle KDE 686G because the dispute was between the Plaintiff and the Interested Parties who had barricaded access to the suit property.

11. He thus sought for dismissal of the application with costs.
12. On the 29th April 2025, the court with the consent directed that the Applications be canvassed by way of written submissions.

Submissions of the Plaintiff

13. Counsel submitted on the following issues for determination as summarised below:
14. On whether the test for injunctive relief has been satisfied as espoused in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 and *Mrao Limited v First American Bank of Kenya and 2 others*, [2003] KLR 125, counsel submitted that the Plaintiff had established a prima facie case as he was a bonafide purchaser for value without notice. According to him, he had purchased the property from the Defendant in good faith knowing he was obtaining a good title. He therefore stood to suffer irreparable harm if the injunctive orders were not granted because he hoped he would sell the 17 parcels of land to realise about Kshs. 25,000,000 citing *Nguruman Limited v Bonde Nielsen & 2 Others* [2014] eKLR on what irreparable injury was.
15. On a balance of convenience, counsel submitted that convenience tilted in favour of maintaining status quo as held in *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR.
16. On whether the inhibition orders were necessary for preservation of the property pending hearing and determination of the suit, it was submitted that Section 13[7] of the *Environment and Land Court Act*, empowered this Court to grant interim orders such as injunctions with reference to the case of *George Oraro v Barak Eston Mbaja* [2005] eKLR.
17. Counsel also submitted that the orders issued by Court had not been by the Defendant since the motor vehicle had been concealed by the Defendant in an attempt to obstruct the cause of justice which was contemptuous as held in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR.
18. On whether the Defendant's application dated 14th February 2025 was merited, it was submitted that the Defendant had not shown sufficient cause for setting aside the orders issued on 10th February 2025. Counsel argued that setting aside of orders was discretionary and should be exercised to avoid an injustice as held in *Shah v Mbogo & another* [1967] EA 116. Counsel added that the motor vehicle had been withheld by the Defendant and he should not be allowed to benefit from defiance of Court orders. As such, the application dated 14th February 2025 should be dismissed with costs to the Plaintiff.

Submissions of the Defendant

19. The Defendant submitted as follows for the Plaintiff's applications dated 10th January 2025, 7th February 2025, 28th February 2025 and the defendant's application dated 14th February 2025.
20. It is submitted that the application dated 10th January was not certified urgent and it came up for directions on 6th February 2025 where parties were given fourteen days each to file their responses and the matter was fixed for mention for further directions on 25th March 2025. On 7th February 2025 the plaintiff filed another application dated 7th February 2025, which was the exact same as the first application dated 10th January 2025 seeking the exact similar orders as in the application dated 10th January 2025 which Court had already given directions on.



21. When parties appeared before this Court on 6th February 2025 this file was mentioned concurrently with ELC E025 of 2024 as they both concern same parties with the same subject matter. This current file was given a mention date for 25th March 2025 and since file ELC E025 of 2024 was going for mediation, parties were directed us to appear before the Deputy Registrar on 10th February 2025 for directions on mediation. On 10th February 2025 the advocate for the defendant and the interested party appeared before the Deputy Registrar as earlier directed for directions on ELC E025 of 2024 where the court directed to log in on 17th February 2025 where a mediator would be appointed on that date. The Plaintiff's Counsel, instead of appearing before the deputy registrar together with other counsels as earlier directed by Court as the plaintiff is also a party in the other file, she appeared before this Court and argued ex-parte Plaintiff's second application dated 7th February 2025 which was a total replica of the plaintiff's application dated 10th January 2025 which the court had already pronounced itself on it. The plaintiff was granted ex-parte orders a, b, f and g of the application dated 7th February 2025 which included impounding of motor vehicle KDE 686G and taken to Kiserian Police Station, and an injunction against the defendant only from dealing with the subject parcels of land and an order of inhibition against the subject motor vehicle. The plaintiff was granted these orders after his counsel on record appeared on 10th February 2025 and argued his second application ex parte whereas his counsel was supposed to have logged in with the other counsels on the deputy registrar's court. This necessitated the defendant to file the application dated 14th February 2025. The plaintiff later filed another third application dated 28th February 2025 seeking for contempt orders against the defendant among other orders.
22. On whether all the ex-parte orders issued to the plaintiff against the defendant in regard to application dated 7th February 2025 on the suit parcels and motor vehicle KDE 686G should be reviewed and/or set aside, counsel submitted that the ex-parte orders were obtained un-procedurally and offended the principles of natural justice as espoused under Article 27, 47[1] and 50[1] and [2] of *the Constitution* and should be reviewed and/or set aside.
23. Counsel raised concern in how the Plaintiff's counsel was allowed to appear ex parte before the Court and argue a certificate of urgency on 10th February 2025, despite the matter having been initially listed for mention on 25th March 2025. Counsel also pointed out that on 6th February 2025, all parties were directed to appear before the Deputy Registrar on 10th February 2025 for mediation allocation in ELC E025 of 2024. The Defendant questions how Plaintiff's counsel bypassed this process and obtained a hearing on the application on the same day. Counsel argues that the Plaintiff being granted the orders in his second application after the Court had granted parties time to file their responses in the first application meant the Defendant and interested party were denied a chance to respond to the plaintiff's application as the orders granted in the second application disposed of the first application. As such, this being an error apparent on the face of record, the Court ought to review/set it aside as provided under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 & 2 Civil Procedure Rules.
24. On whether an order of temporary injunction should be issued against the plaintiff or his servants from interfering with land parcel numbers Kajjado/Olchoro Onyore/397646, 39647, 39648, 39649, 39650, 39651, 39652, 39653, 39654, 39655, 39656, 39657, 39658, 39659, 39660 pending the hearing and determination of this application and the main suit, counsel submitted that an order for temporary injunction should be issued against the plaintiff from interfering and dealing with the above parcels of land. It was argued that the Defendant transferred the above parcels of land to the plaintiff who is the current registered owner and in possession of the same. The plaintiff has also sub-divided the above parcels of land with intention of disposing/selling them. To protect the subject matter of this suit it was necessary that the plaintiff and the interested party be barred from dealing or interfering with the



same until this suit is heard and determined noting that the parcel of land was also a subject matter in ELC E025 of 2024. Counsel also argued that since an order of inhibition had been registered on motor vehicle KDE 686G which was in the defendant's possession, and the said motor vehicle impounded at Kiserian police station, it was only just and fair that the plaintiff be stopped from dealing with the parcels of land. Counsel submitted that the defendant stands to suffer irreparable damage which cannot be compensated in damages should a temporary injunction not be issued against the plaintiff and the interested party from dealing and interfering with the subject motor vehicle and the subject parcels of land as he is also a purchaser for value and has a prima facie case.

25. Counsel also submitted that to safeguard the parcels of land being same subject matter in ELC E025 of 2024 the plaintiff should be directed to deposit all original title deeds to the Court.
26. On the issue of contempt, counsel submitted that by the time the plaintiff served the defendant with the court order, he had already travelled to Tanzania and his motor vehicle broke down while there. This was communicated to the plaintiff. The defendant filed a police report and recorded an OB confirming the same. To demonstrate his willingness to comply with the court order, once motor vehicle KDE 686G had been repaired, he went to Tanzania and personally drove the said motor vehicle from Tanzania to Kiserian Police Station where it is currently being stored in compliance with the ex-parte court order.
27. On the issue of costs, counsel submitted that the Defendant was entitled to costs of this application as well as the other three applications.

Analysis and Determination

28. I have considered the Notice of Motion dated 10th January 2025, the affidavit in support, the response thereto, the written submissions and the legal authorities cited. I find that the issues for determination are;
 - i. Whether the Plaintiff/Applicant's application meets the threshold for grant of temporary injunction.
 - ii. Should the court issue orders of inhibition?
 - iii. Who should bear costs of the application?
29. The Plaintiff/Applicant seeks the Court's intervention in restraining the Defendant from interfering in any manner with parcels Kajiado/Olchoro Onyore 39644 to 39660 and that an inhibition be registered against them. He also seeks that an inhibition be registered against motor vehicle Toyota Prado KDE 686G to bar the Defendant from disposing it and that it be impounded by the OCS Kiserian Police Station.
30. He claims that he purchased property Kajiado/Olchoro Onyore/38653 from the Defendant and subdivided it into Kajiado/Olchoro Onyore; 39644 to 39660 with an intention of selling them. However, the 1st Interested Party, barricaded the access road and filed case ELC E025 of 2024. This had caused him loss because he could no longer sell the suit properties as intended while the Defendant continues to use the Motor Vehicle which was part of the purchase price.
31. The Defendant acknowledged that the sale indeed happened and the purchase price was paid both in cash and in kind through the motor vehicle in question. He however contested the application on grounds that it was premature because he passed legal and valid title to the Plaintiff. It is his case that the 1st Interested Party had no valid claim against the suit property. ELC E025 of 2024 was yet to be determined.



32. It is not indispute that ELC E025 of 2024 is between the same parties and the same subject matter. In that suit, the Court issued a restraining and an inhibition order against the Defendants and Interested Parties from interfering with the suit property pending hearing and determination. The Plaintiff and the Defendant have submitted themselves to court annexed mediation.
33. Since the suit properties in this instant suit are subdivisions of the properties in contention in ELC E025 of 2024, this Court finds that in order to preserve the properties, the orders sought in reference with properties Kajiado/Olchoro Onyore/39644 to 39660 are merited.
34. I also find that it is prudent to issue an inhibition against motor vehicle Toyota Prado KDE 686G pending the hearing and determination of the suit.
35. I find that it is in the interest of Justice that the said Motor Vehicle Registration NO.KDE 686G be impounded pending the hearing and determination of this suit.
36. I find merit in the Notice of Motion dated 10th January 2025 and I grant the orders sought namely;
 - a. That an order of injunction is hereby issued restraining the Defendant whether by himself or through any person whomsoever from interfering with the Properties known as Title number Kajiado/Olchoro-Onyore/39644, Kajiado/Olchoro-Onyore/39645, Kajiado/Olchoro-Onyore/39646, Kajiado/Olchoro-Onyore/39647, Kajiado/Olchoro-Onyore/39648, Kajiado/Olchoro-Onyore/39649, Kajiado/Olchoro-Onyore/39650, Kajiado/Olchoro-Onyore/39651, Kajiado/Olchoro-Onyore/39652, Kajiado/Olchoro-Onyore/39653, Kajiado/Olchoro-Onyore/39654, Kajiado/Olchoro-Onyore/39655, Kajiado/Olchoro-Onyore/39656, Kajiado/Olchoro-Onyore/39657, Kajiado/Olchoro-Onyore/39658, Kajiado/Olchoro-Onyore/39659, Kajiado/Olchoro-Onyore/39660 each measuring approximately 0.09Ha surveying, sale, transfer, construction, wastage, amalgamation, disposal, cultivation, taking occupation, leasing out or by any other means whatsoever and howsoever pending the hearing and determination of this suit.
 - b. That the Land Registrar is hereby directed to register an inhibition be against titles Kajiado/Olchoro-Onyore/39644, Kajiado/OlchoroOnyore/39645, Kajiado/Olchoro-Onyore/39646, Kajiado/OlchoroOnyore/39647, Kajiado/Olchoro-Onyore/39648, Kajiado/OlchoroOnyore/39649, Kajiado/Olchoro-Onyore/39650, Kajiado/OlchoroOnyore/39651, Kajiado/Olchoro-Onyore/39652, Kajiado/OlchoroOnyore/39653, Kajiado/Olchoro-Onyore/39654, Kajiado/OlchoroOnyore/39655, Kajiado/Olchoro-Onyore/39656, Kajiado/OlchoroOnyore/39657, Kajiado/Olchoro-Onyore/39658, Kajiado/Olchoro-Onyore/39659 and Kajiado/Olchoro-Onyore/39660 each measuring approximately 0.09Ha pending the hearing and determination of this suit.
 - c. That an order of inhibition be registered against Motor Vehicle KDE 686G Toyota Prado barring the defendant by himself or through a third party from sale, transfer, disposal or leasing out of the said Motor Vehicle.
 - d. That an order is hereby issued directing the OCS Kiserian Police Station to impound the said Motor Vehicle KDE 686 G Toyota Prado, pending the hearing and determination of this suit.
37. I note that the Notice of Motion dated 7th February 2025 is a replica of the Notice of Motion dated 10th January 2025. This court while considering the Notice of Motion in the first instance granted orders [b] [f] and [g] which orders are hereby confirmed. This means the Notice of Motion dated 7th February 2025 is allowed in its entirety.



38. The Defendants Notice of Motion dated 14th February 2025, is brought; Under Article 27[1], 40, 50[1] and 159 [2] [d] of *the Constitution*; Section 1A, 3, 3A, 63 [e], and 80 of the *Civil Procedure Act*; Order 22 rule 22, Order 40 Rule [1][2] and [3] Order 45 Rules 1&2, Order 51 Rule 1& 3, Order 51 Rule 15 of the Civil Procedure Rules; and all other enabling provisions of the law. It seeks orders that:
- i. Spent
 - ii. The Honourable court be pleased to stay execution of all the Ex parte Orders issued on 10th February 2025 against the defendant /applicant for impounding motor vehicle KDE 686G, registration of inhibition against the transfer of the said motor vehicle and other consequential orders therein pending the hearing and determination of this Application Inter-parties.
 - iii. All the Ex parte Orders issued against the defendant/applicant concerning his motor vehicle KDE 686G on 10th February 2025 be reviewed and/or set aside.
 - iv. The Honorable Court be pleased to issue an order directed to the O.C.S. Kiserian Police Station and the Plaintiff restraining them, their agents, servants and/or any other person acting under them from impounding motor vehicle KDE 686G or registering any inhibition on the said motor vehicle pending the hearing and determination of this application inter-parties.
 - v. This court be pleased to issue an order of temporary injunction restraining the plaintiff/applicant and or his agents/servants from selling, leasing, subdividing, interfering and/or dealing with land parcels numbers Kajiado/Olchoro Onyore/39644, 39645, 39646, 39647, 39648, 39649, 39650, 39651, 39652, 39653, 39654, 39655, 39656, 39657, 39658, 39659 and 39660 pending the hearing and determination of this application.
 - vi. his Honorable court be pleased to issue an order directing the plaintiff /respondent to deposit to this honorable court all the original title deeds for land parcel numbers Kajiado/Olchoro Onyore/39644, 39645, 39646, 39647, 39648, 39649, 39650, 39651, 39652, 39653, 39654, 39655, 39656, 39657, 39658, 39659 and 39660 pending the hearing and determination of this application and the main suit.
 - vii. Costs of this application be provided for.
39. The grounds are on the face of the application. The same is supported by the affidavit of Yiangaso Ole Toiyanga. He averred that on 10th February 2025 the Plaintiff/Applicant obtained ex parte orders for impounding of motor vehicle KDE 686G Toyota Prado and to be kept at Kiserian Police Station.
40. He further deponed that on 6th February 2025, the parties appeared before Court for mention for direction on the status of mediation in ELC E025 of 2024, mention for submissions on the pending applications on ELC number E025 of 2024. This matter was also mentioned concurrently since they are related and emanate from the same subject matter involving the same parties. On this day, the Court gave parties 14 days to file their responses and the matter was set to be mentioned for directions on 26th March 2025. The court then directed parties to appear before the Deputy registrar on the 10th February 2025 for directions on mediation for ELC E025 of 2024.
41. Instead of the Plaintiff's counsel logging in to the DR's Court, appeared before this Court and misdirected it that the matter was set for inter-parties hearing on that same day and obtained orders against the Defendant/Applicant yet this Court had already given directions on 6th February 2025. Neither the Defendant nor his advocates on record were served with a mention or hearing notice for the said application coming up for inter-parties hearing on 10th February 2025. The Defendant and his advocates were served with the Notice of motion dated 7th February 2025.



42. The Defendant therefore stands to suffer irreparable loss and damage if the said orders are not stayed and/or reviewed/set aside as he is an innocent purchaser of value of the said motor vehicle and he had already transferred his parcels of land into the plaintiff's name, to which the plaintiff holds original title and had even sub-divided them into smaller portions with the intention of selling them. He added that setting aside of the orders would be in the interest of justice so as to accord him a fair trial.
43. The Plaintiff Ndung'u Kairie in response to this application, filed a Replying Affidavit dated 21st March 2025 in which he claimed that the Defendant had misled the Court. He stated that his counsel having filed the application dated 7th February 2025, indeed appeared before Court on 10th February 2025 as the matter was duly on the cause list. He claims that the Application was heard ex-parte and there was no requirement to serve the Applicant/Defendant. As such, the Orders granted on 10th February 2025 did not relate to the Application dated 10th January 2025 which the Court directed to be heard on 26th March 2025. Thereafter, it was served to the Defendant which was met with hostility. He also stated that he could not interfere with the suit properties because they were under investigations and the Defendant was only out to frustrate the Plaintiff by refusing to comply with the order which was an act of contempt.
44. The Defendant in his supplementary affidavit contested the above averments on grounds that, the orders sought in the application dated 7th February 2025 were similar to the orders sought in the application dated 10th January 2025. Therefore this Court in granting the orders in the second application after giving parties opportunity to respond to the first application dated 10th January 2025 meant that parties were locked out from being heard before the said orders were issued. He also stated that he learnt about this orders after he was contacted by OCS Kiserian Police Station. He also contested the allegation that the suit property was under investigations adding that since the Plaintiff had obtained adverse orders against him, then it was only fair for an injunction to be issued against use of the suit property. He also stated that the said motor vehicle had broken down while in Tanzania and he was not hiding it as claimed by the Plaintiff.
45. It should be noted that despite orders being granted on 10th February 2025, the Defendant has neglected and/or disobeyed the same. He ought to comply with this court's orders before seeking to be heard I find no merit in the Notice of Motion dated 14th February 2025 and the same is dismissed.
46. On 28th February 2025, the Plaintiff once again filed another Notice of Motion seeking:
- i. That the Officer Commanding Station Kiserian Police has had a challenge in tracing to impound the said motor vehicle KDE 686G Toyota Prado and the auctioneer be allowed to assist in execution of the Court Order granted on 10th February 2025 as is their normal course of business.
 - ii. That the Defendant has made it difficult to execute the Order dated 10th February 2025 by hiding the said motor vehicle and therefore is in contempt of this Court and a warrant for his arrest should be issued.
 - iii. That the Plaintiff continues to suffer irreparable harm due to the delay in execution of the said Court Order.
 - iv. That the Plaintiff is afraid that if the Motor Vehicle is stored at Kiserian police station it may be interfered with by the Defendant and/or his agents thus diminishing its value.
 - v. It is only fair and in the interest of justice that the Orders sought be granted ex-parte.



47. This application is supported by the sworn Affidavit of Ndung'u Kiarie. He claimed that having obtained this Court's orders dated 10th February 2025, the OCS Kiserian Police Station had found it difficult to execute the same because the Defendant had hidden the said Motor Vehicle. He therefore seeks for these orders in order to ensure that the subject of the suit was not tampered with and for the Defendant to be found in contempt of the court's orders.

48. The defendant in response to this application, once again opposed the application on grounds that the motor vehicle in question had broken down while in Tanzania as per the report made and would comply with the orders once it had been fixed. He also claimed that the Plaintiff had not demonstrated how he would interfere with the said Motor Vehicle adding that impounding it would cause it to wear and tear.

49. The issue for determination is whether the Defendant has complied with this court's orders.

It should be noted that the Defendant has neglected and or refused to surrender the Motor Vehicle in question. The plaintiff has sworn an affidavit to state that the Defendant has made it impossible for the orders to be executed by concealing the Motor Vehicle. In the case of *Stephen Maina Kimanga & 4 Others v Lucy Waithira Mwangi & 2 Others* [2015] eKLR the court held;

“However, where it is apparent that a party is unreasonably and unlawfully attempting to obstruct a lawful process or the cause of justice, a court of law will not hesitate to stamp its seal of authority using the lawful agencies of the state. I am satisfied that the current application for the use of external forces to oversee the execution of this court's order is merited.”

50. Similarly in the case of *Econet Wireless Kenya Ltd v Minister of Information & Communication of Kenya & Another* [2005] KEHC 1767 [KLR] Ibrahim J [as he then was] held, “.....where an application for contempt of court order is made, the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious; a contemnor would have no right of audience in any court of law unless he is punished or he purges the contempt.....”

51. The Defendant has failed to give justifiable reasons as to why he has not complied with the court's orders issued on 10th February 2025.

52. I am convinced that he has wilfully disobeyed this court's orders and he ought to be punished.

53. I allow the Notice of Motion dated 28th February 2025 in the following terms;

a. That the Defendant is hereby ordered to appear before this Honourable court to show cause as to why he should not be punished for contempt, on the 28th July 2025. Failure to which a Warrant of Arrest do issue.

b. That the costs of these applications do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 3RD DAY OF JULY 2025.

L. KOMINGOI

JUDGE.



In The Presence Of:

Ms. Karanja for the Plaintiff.

Mr. Karanja for the Defendant.

Ms. Achieng for Ms. Mongare for the Interested Parties.

Court Assistant – Mateli.

