



Muoka & another v Mombasa Water Supply and Sanitation Co Ltd & 2 others (Environment and Land Petition E013 of 2024) [2025] KEELC 5253 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5253 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND PETITION E013 OF 2024**

**YM ANGIMA, J
JULY 10, 2025**

BETWEEN

KIOKO MUOKA 1ST PETITIONER

ANN NDERITU 2ND PETITIONER

AND

MOMBASA WATER SUPPLY AND SANITATION CO LTD ... 1ST RESPONDENT

MOMBASA PIPELINE CO LTD 2ND RESPONDENT

JOB NYARIBO 3RD RESPONDENT

RULING

A. Petitioner's Application

1. By a notice of motion dated 27.05.2024 filed pursuant to Article 159 of the Constitution of Kenya, Sections 1, 1A, 3A, 63 (e) and 80 of the Civil Procedure Act (Cap. 21), Order 40 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law, the petitioners sought an interim order stopping the installation of water pipes through their business premises pending the hearing and determination of the petition.
2. The application was supported by an affidavit sworn by Kioko Muoka sworn on 27.05.2024. It was deposed that the petitioners had leased a certain business place known as Thwake Resort in Chaani-Mombasa County for a period of 3 years with effect from 06.09.2023 and that they were apprehensive that the respondents intended to install water pipes traversing the property without making any compensation to them.
3. The petitioners further pleaded that they were apprehensive that their business might be conversely affected if the respondents proceeded with their water project. The petitioners further pleaded that



other affected residents in the area had been compensated for installation of the water pipes and that the respondents' failure to compensate them was discriminatory and unconstitutional.

B. Respondents' Response

4. The record shows that the 1st respondent filed a replying affidavit sworn by Jacob Kuria on 04.04.2025 in opposition to the application. The 1st respondent conceded that there was an on-going Water Project in Chaani area for the rehabilitation and extension of Mombasa water supply distribution system but denied that the petitioners' business premises shall be affected by the project. It was contended that all project affected persons were identified and compensated and that there was no evidence before court to demonstrate that the petitioners were affected persons. It was thus contended that the instant application was merely speculative hence it ought to be dismissed with costs.
5. The 3rd respondent filed a replying affidavit sworn on 31.01.2025 in opposition to the application. He deposed that he was employed by the 1st respondent in the waste water department and that he had nothing to do with the project complained of since it fell under a totally different department known as the water department.
6. The 3rd respondent contended that he had been wrongly joined in the proceedings because of the petitioners' failure to conduct due diligence before filing suit. He therefore asked the court to expunge his name from the proceedings since he had nothing to do with the impugned water project.

C. Directions on Submissions

7. When the application was listed for inter partes hearing it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their submissions. The record shows that the 1st respondent filed submissions dated 04.04.2025 but the petitioners' and the 3rd respondent's submissions were not on record by the time of preparation of the ruling.

D. Issues for Determination

8. The court has considered the motion dated 27.05.2024, the replying affidavits in opposition thereto as well as the material on record. The court is of the view that the following are the main issues which arise for determination herein;
 - a. Whether the petitioners are entitled to the interim injunction sought.
 - b. Whether the 3rd respondent should be struck off the proceedings.
 - c. Who shall bear costs of the application.

E. Analysis and Determination

a. Whether The Petitioners Are Entitled to the Interim Injunction Sought

9. The court has considered the material and submissions on record on this issue. Order 40 Rule 1 of the [Civil Procedure Rules](#) which was cited by the petitioners stipulates as follows;

“Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or



- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

10. It is clear from the material on record that the petitioners claimed to have leased some business premises at Chaani where they were carrying on business as Thwake Resort. The particulars of the property were not described by parcel number, sub-division number or CR Number either in the petition or application for interim orders. There was no credible evidence on record to demonstrate who was the registered proprietor of the said premises save that the petitioners claimed to have leased it for 3 years from 3 named individuals who were described as “landlords”.
11. There is no indication on record to show that the said landlords were aware of the petition or an explanation to why they did not seek to be joined in the petition as the owners of the property. The petition and the application indicated that the intended installation of water pipes was not a short-term exercise. There was no indication that the water pipes were to remain on the ground for 3 years only after which they would be removed.
12. The court has noted that the petitioners did not file any further or supplementary affidavit to the 1st respondent’s replying affidavit which asserted that the petitioners were not affected by the water project hence they were not entitled to compensation. Moreover, the court finds absolutely no evidence in the application to show that the premises on which the petitioners are carrying on business was affected or was about to be affected by the project.
13. The court is unable to find any evidence on record to demonstrate even on a *prima facie* basis the petitioners’ business premises are in danger of being wasted, damaged or alienated within the meaning of Order 40 Rule 1 of the *Civil Procedure Rules*. The court is thus far from satisfied that the petitioners have made out a *prima facie* case with probability of success at the trial or within the meaning of the principles enunciated in the case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358. In the event, it shall not be necessary to consider the other principles for the grant of an interim injunction. As a result, the petitioners’ application shall fail at the first of the three hurdles.

b. Whether the 3rd Respondent Should Be Struck Out of the Proceedings

14. The court has considered the material on record. It is evident from the replying affidavit filed on behalf of the 1st respondent that it is the one undertaking the water project complained of. It is also noteworthy that the 3rd respondent filed a replying affidavit deposing that he was an employee of the 1st respondent in the waste water department which was not involved in water supply or rehabilitation projects. The petitioners did not file any further or supplementary affidavit to dispute the 3rd respondent’s affidavit.
15. In the premises, the court is satisfied that the 3rd respondent was wrongfully and improperly sued in the proceedings. The court is further of the view that even if the 3rd respondent was an employee in the 1st respondent’s water department he ought not to have been sued in his personal capacity since he was merely an agent of a disclosed and well known principal. As a result, the court finds that there is no reasonable cause of action against him hence he should be removed from the proceedings.



c. Who Shall Bear the Costs of the Application

16. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the 1st and 3rd respondents shall be awarded costs of the application.

F. Conclusion and Disposal Orders

17. The upshot of the foregoing is that the court finds absolutely no merit in the petitioners' application. As a consequence, the court makes the following disposal orders;

- a. The Notice of Motion dated 27.04.2023 is hereby dismissed in its entirety with costs.
- b. The 3rd Respondent is hereby struck off the proceedings and the petitioners shall pay his costs assessed at Kshs. 20,000/=.
- c. The petition shall be mentioned on 14.10.2025 for pre-trial directions
Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 10TH DAY OF JULY, 2025.

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Y. M. ANGIMA

JUDGE

In the presence

Gillian – Court Assistant

No appearance for Petitioners

Mr. Kombe for the 1st Respondent

No appearance for the 2nd Respondent

No appearance for the 3rd Respondent

