



**Mutabari & 8 others v Koruta (Environment & Land Case
636 of 2017) [2025] KEELC 4142 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4142 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 636 OF 2017**

MD MWANGI, J

MAY 22, 2025

BETWEEN

RACHEL MUTABARI 1ST APPLICANT
BERNARD NJOGU NJOROGE 2ND APPLICANT
MARY WANJIKI NJUNGE 3RD APPLICANT
PETER M. KARIUKI 4TH APPLICANT
MARTHA WANJIKU 5TH APPLICANT
GIVERN WANJALA 6TH APPLICANT
BILLY JOSEPH LENANA NGAAGI 7TH APPLICANT
LUCY KANYI NJOMO 8TH APPLICANT
DENNIS NJOROGE 9TH APPLICANT

AND

KASAINO OLE KORUTA RESPONDENT

RULING

(In respect of the Plaintiffs/Applicants Notice of Motion dated 17th March, 2025 brought under Sections 1A, 1B, 3, 3A and 63 of the *Civil Procedure Act*)

Background

1. The Application under consideration is the Notice of Motion dated 17th March, 2025 whereby the Plaintiffs/Applicants seeks for the following prayers;
 - a. Spent



- b. Spent
 - c. Spent
 - d. Spent
 - e. That this honorable court be pleased to make such further orders as it may deem just and expedient in the circumstances of this case
 - f. That the costs of the Application be provided for.
2. A perusal of the Plaintiffs’ application indicates that the substantive prayers upon which the application is premised on have already been spent. This is because the reliefs sought were drafted in the nature of ex parte orders; ‘pending the hearing and determination of this application’. In essence then, the only remaining prayer being sought in the application is, “such further orders as it may deem just and expedient in the circumstances of this case”.
 3. Courts have on numerous occasions held that parties are bound by their own pleadings. This principle was adopted by the Supreme Court in *Odinga & another -vs- Independent Electoral and Boundaries Commission & 2 others* [2017] KESC 31 (KLR), while citing the decision of the Supreme Court of India in *Arikala Narasa Reddy v Venkata Ram Reddy Reddygari & Another* Appeal Nos 5710-5711 of 2012; [2014] 2 SCR, which stated as follows;

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.”
 4. The Court of Appeal in *Ann Wairimu Wanjohi v James Wambiru Mukabi* [2021] KECA 476 (KLR), adopted a similar approach by holding as follows;

“We take the view that parties should specifically state their claim by properly pleading the facts relied upon and the relief sought, as the pleadings are the primary documents that guide the court and the parties concerning the claim and the contesting positions of the parties.

In accordance with the Civil Procedure Rules, the parties should also either provide a list of agreed issues, or if there is no agreement, each provide their own list of issues so that the court can settle the issues. Although it is desirable that where necessary the pleadings should be amended to bring in all the issues, *Odd Jobs vs Mubia* (supra) remains good law, that in limited circumstances where an unpleaded issue is crucial to the matters in issue the court may determine a suit on the unpleaded issue, provided both parties have clearly addressed the unpleaded issue in their evidence or submissions, and left the matter for the determination of the court. However, such determination will not extend to determining or awarding a relief that was not specifically sought in the pleadings.”
 5. The same way parties are bound by their own pleadings, courts too must in exercise of their judicial authority be guided by parties’ pleadings while making their determination. This implies that under no circumstances should courts grant orders that have not been sought by



the parties. This position was adopted by the Court of Appeal in *Lamba v National Social Security Fund & another (Civil Appeal E168 of 2021)* [2023] KECA 124 (KLR) (3 February 2023) (Judgment), where it stated as follows;

“It is trite law that courts can only grant orders that have been prayed for in the pleadings, or make appropriate orders as it deems fit if need arises in the cause of a trial. Indeed, where a court has proceeded to grant a relief not contained in prayers in the pleading or not regularly sought by a party expressly or by implication, appellate courts have had no hesitation in annulling or overturning orders granting such reliefs.”

6. Guided by the above cited judicial authorities, I see no basis for proceeding to determine the Plaintiffs’ application considering that there are no substantive prayers sought. Consequently, I hereby strike out the Plaintiffs/Applicants’ Notice of Motion dated March 17, 2025 with costs to the Defendant/Respondent.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 22ND DAY OF MAY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Oware for the Applicants

Mr. Otieno for the Respondent

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

