



Taiko & another v Kajiado & 3 others (Miscellaneous Civil Application E015 of 2023) [2024] KEELC 7359 (KLR) (5 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7359 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
MISCELLANEOUS CIVIL APPLICATION E015 OF 2023
LC KOMINGOI, J
NOVEMBER 5, 2024**

BETWEEN

BENSON MBOYA TAIKO 1ST EXPARTE APPLICANT

AMOS TAIKO 2ND EXPARTE APPLICANT

AND

DISTRICT LAND REGISTRAR, KAJIADO 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

COUNTY SURVEYOR, KAJIADO 3RD RESPONDENT

DIRECTOR OF SURVEYS 4TH RESPONDENT

RULING

1. This is the Notice of Motion dated 30th August 2024 brought under; (the residual and inherent powers of the court and all other enabling provisions of the law).
2. It seeks orders;
 1. Spent.
 2. Spent.
 3. That this Honourable Court be pleased to grant an order of injunction prohibiting the respondents from implementing the ruling/determination of the 1st Respondent dated the 29th August, 2023 adopting the District Surveyor Kajiado report dated the 8th August, 2023 and/or from implementing the report on the Boundary Lines between Kajiado/Elangata Wuas 17(3083), 8, 2, 10,11,16,8,594,574,593,592 (807 & 808), from effecting changes on the register, from amending the Register at the Survey office and at the land office Kajiado, from adjusting the boundaries to the above parcels of land, from issuance of new beacon numbers,



from processing titles to affect the applicants titles or in any other manner from interfering and/or from having any dealings with the subject suit land above pending the hearing and determination of the appeal or the intended appeal.

4. That costs of this application be provided for.
3. The grounds are on the face of the Application and set out in paragraphs 1 to 14.
4. The Notice of Motion is supported by the affidavit of Benson Mboya Taiko, one of the Administrators of the estate of Nkoipuruduo Kiroya Maika alias Nkoipurduwo Kiroya Maika (Deceased), the original owner of land parcel Kajiado/Enlangata – Wuas/17/3083.
5. There is an affidavit of service sworn by Simon James, Court process server on the 14th October 2024. The said process server depones that the Respondent’s accepted service by stamping on the front page of the Notice of Motion and the court’s directions. The same are not attached to his affidavit of service.
6. Be that as it may I will go ahead and consider the merits of the Notice of Motion. In the case of Patricia Njeri & 3 Others Vs. National Museum of Kenya (2004) eKLR the court gave the following principles as governing grant of temporary injunction pending appeal;
 - a. An order for injunction pending appeal is a discretionary one which will be exercised against an applicant whose appeal is frivolous.
 - b. The discretion should be refused where it would inflict great hardship that it would avoid.
 - c. The applicant must show that to refuse the injunction would render the appeal nugatory.
 - d. The court should also be guided by the principles of Giella Vs. Cassman Brown (1973) EA 358.”
7. Similarly in Western College of Arts and Applied Sciences (Weco) Vs. Oranga (1976) KLR 63 the court stated;

“But what is there to be executed under the judgement the subject of the intended appeal”
The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs. In the instant case, the High Court has not ordered any of the parties to do anything or refrain from doing anything or to pay any sum. There is nothing arising out of the High Court Judgement for this Court, in an application for stay, to ensue or to refrain by injunction.”
8. I am guided by the above authorities in finding that the Exparte Applicant herein has not established a prima facie case with a probability of success.
9. I find that the Applicant has failed to demonstrate that the Appeal would be rendered nugatory if the injunction is refused as the issue before the Respondents was a boundary dispute.
10. I take exception to paragraphs 4(d) where the 1st Exparte Applicant depones;

“That the Learned Trial Judge erred in law and infact in descending to the arena of the litigation and imputing that the Appellant/Applicant were given a fair hearing by being present and heard during the site visit on the beacons and the trial court stated that it does not matter whether the process took one day, two days or a few hours. For the appellants, the above conclusion was perverse because the Ex-parte applicants’ case had remained unchallenged and/or uncontroverted and therefore the above judgement was impeachable.”



I find these averments to be unsubstantiated and malicious to say the least.

11. In conclusion I find no merit in this application and the same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF NOVEMBER 2024.

L. KOMINGOI

JUDGE

In The Presence Of:

Ms. Martin for Mr. Arusei for the Exparte Applicants.

N/A for the Respondents.

Court Assistant – Mutisya.

