



Mangi & 198 others v Kenya Airports Authority (Environment and Land Miscellaneous Application E041 of 2024) [2024] KEELC 13556 (KLR) (3 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13556 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E041 OF 2024
FM NJOROGE, J
DECEMBER 3, 2024**

**BETWEEN
DICKSON KAINGU MANGI & 198 OTHERS & 198 OTHERS APPLICANT
AND
KENYA AIRPORTS AUTHORITY RESPONDENT**

RULING

1. The Notice of Motion application and preliminary objection for determination in this ruling are dated 2/10/2024 and 24/10/24 respectively.
2. The preliminary objection by the respondent shall be addressed first without needing to delve into the substance of the motion. It is limbed as follows:
 1. The plaintiffs' applicants' application offends the mandatory provisions of Order 3 Rule 1 of the Civil Procedure Rules which requires that a suit shall be instituted by way of a plaint, petition, or originating summons. There is thus no suit upon which the instant application is anchored on for the court's determination.
 2. The instant application has been commenced through unprocedural means. It is thus fatally defective and should be struck out in limine;
 3. In the circumstances and in the absence of a plaint petition or originating summons, there is no substantive suit within the meaning of Order 3 Rules 1 and 2 of the Civil Procedure Rules 2010. The application is incurably defective. It would be a travesty of justice were this court to entertain it.
3. All the limbs of the preliminary objection can be summed up into one issue: whether or not the miscellaneous application dated 2/10/2024 is incompetent for reason of not being premised on any suit. The objection raised in this matter by the respondent falls squarely within the definition of a



preliminary objection in Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd (1969) EA 696 as it is capable of disposing of the entire miscellaneous application.

4. Section 19 of the Civil Procedure Act provides that: -

Every suit shall be instituted in such manner as may be prescribed by rules.”

5. Order 3 Rule 1 of the Civil Procedure Rules provides that: -

Every suit shall be instituted by presenting a plaint to the court, or in such other manner as may be prescribed.”

6. Order 40 Rule 1 of the Civil Procedure Rules provides as follows: -

1. 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.”

7. This court agrees that in the present matter, there is no suit commenced by way of plaint petition or originating summons, the three known methods of filing suit. The application is a standalone application that seeks orders with far-reaching ramifications of holding the respondent’s officer’s in contempt for non-compliance with what the applicants call a consent judgment dated 8/2/2024. It also seeks an order of temporary injunction to restrain the takeover of the respondent by an organization or a body they call the Adani Group, until the details of the proposed acquisition process are made public so as to enable the applicants ascertain if their claims are listed as liabilities. This would enable them rest assured that their interests are protected. But as there is no suit it would be amiss for this court to entertain the application for orders of injunction.

8. It is thus clear from the foregoing provisions that an application for injunction ought to be premised on a suit. I agree with Mr Adhoch’s argument that conservatory orders can not be sustained without a substantive suit. Perchance the orders are granted herein as prayed, the question in this case would be: those orders being conservatory in nature, what would be left pending? And the answer would be: nothing.

9. In *Rajab Kosgei Magut v Nuru Jepleting Choge* [2020] eKLR and in *Malindi ELC Misc Application No. E024 OF 2024 - Pastor Benjamin Kahindi Thoya & 4 Others Vs Japheth Katana Kaingu* the court upheld an objection to the commencing of proceedings through a miscellaneous application. In the *Pastor Benjamin Kahindi Thoya* case (supra) the court observed similar holdings in *Geoffrey Ndungu Theuri vs Law Society of Kenya* [1988] eKLR, *Proto Energy Limited v Hashi Energy Limited* [2019] eKLR, *Wanja & another v Roothaert* (Miscellaneous Application E193 of 2021) [2022] KEHC 10255 (KLR) (3 June 2022) (Ruling), and *Mwavumbo Group Ranch v Kenya Electricity Transmission Company Limited (KETRACO)* (Environment & Land Miscellaneous Case 2 of 2022) [2023] KEELC 18844 (KLR) (22 June 2023) (Ruling). There is indeed no dearth of authorities to support that position.



10. However, this court's attention has been drawn to the orders of committal sought, in prayers no. 2 and 3 in the application. Those are substantive prayers. Does their presence alter the foreboding regarding the present application? This court is of the view that since what the applicants seek to enforce is compliance with orders to commence and carry on with a process that will ensure that the rights of the applicants are determined, orders of committal are not available at the moment, whether they can be validly sought in a miscellaneous application or not. There being no prior order of mandamus to compel the performance of a public duty by the officers named, this court finds no basis for seeking the committal or fine orders against them and on that basis the said prayers ought to fail too.
11. The upshot of the foregoing is that the respondent's preliminary objection dated 24/10/2024 succeeds, and this court finds that the motion dated 2/10/2024 is incompetent and it is hereby dismissed. However each party shall bear their own costs.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 3RD DAY OF DECEMBER 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

