



**Ramoya & 2 others v Barasa (Environment & Land Case 36 of 2016)  
[2023] KEELC 19843 (KLR) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19843 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT & LAND CASE 36 OF 2016  
BN OLAO, J  
SEPTEMBER 19, 2023**

**BETWEEN**

**MICHAEL RABARE RAMOYA ..... 1<sup>ST</sup> APPLICANT**

**RAJAB IBRAHIM WESONGA ..... 2<sup>ND</sup> APPLICANT**

**BRIAN OSINYA WANYAMA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**STEPHEN OKOTA BARASA ..... RESPONDENT**

**RULING**

1. Stephen Okota Barasa (the Respondent herein) has clearly mastered the art of how to abuse the process of the Court. His exploits in these proceedings paint a picture of a person who would make a good tutorial fellow in a class offering the subject of “stone-walling” and “abuse of the judicial process”.
2. As will soon become clear from this ruling, the Respondent is quite adept in abusing the judicial process. And so far, he has utilized his skills very well in these proceedings much to the chagrin of the Applicants and their counsel Mr JV Juma. However, now is the time to inform him that his sojourn in that arena, at least for purposes of this case, has hit a cul de sac.
3. The term “abuse of Process” is defined in *Black’s Law Dictionary* as follows:  

“The improper and tortious use of legitimately issued Court process to obtain a result that is either unlawful or beyond the process’s scope.”



4. In the case of *Muchanga Investments Ltd v Safaris Unlimited (africa) Ltd & 2 Others* 2009 eKLR, the Court of Appeal citing Wikipedia, the free Encyclopedia said:

“The person who abuses process is interested only in accomplishing some improper purpose that is collateral to the proper object of the process that offends justice.”
5. It then went on to affirm the decision of Mohamad CJ in the South African case of the Appeal Court in *Beinosi v Wivley* 1973 SA 721 [SCA] of page 734 F-G where the Judge said:

“What does constitute an abuse of process of the Court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of ‘abuse of process’. It can be said in general terms, however, that an abuse of process takes place where the proceedings permitted by the rule of Court to facilitate the pursuit of the truth are used for purposes extraneous to that objective.”
6. The concept of abuse of judicial process was also defined in the Nigerian case of *Sarak v Kotoye* (1992) 9 NWLR 9pt 264 as:

“The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. Its only feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice.”
7. The dispute between Michael Rabare Ramoya; Rajab Ibrahim Wesonga and Brian Osinya Wanyama (the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants respectively) and the Respondent over the ownership of the land parcels No Bukhayo/Mundika/349 and 351 was heard by Omollo J. In a judgment delivered on October 29, 2020, the judge found in favour of the Applicants.
8. The Respondent was aggrieved by that judgment and promptly filed a Notice of appeal dated October 30, 2020 through his then counsel Gabriel Fwaya & Company Advocates.
9. On July 29, 2021, the Respondent filed a Notice of Motion seeking two substantive orders being:
  1. Leave be granted to the firm of Nandwa & Company Advocates to come on record in place of the firm of Gabriel Fwaya & Company Advocates.
  2. There be an order of stay of execution of the judgment and decree herein pending the hearing and determination of the intended appeal.
10. Prior to that, the Applicants had extracted a decree and taxed their bill of costs in the sum of Kshs 222,815. Those costs were not paid and a Notice to show Cause was issued.
11. When the Notice of Motion filed on July 29, 2021 came up on the same day before Omollo J, the Judge fixed it for hearing on September 28, 2021. On that day, however, the parties sought time to negotiate and were given upto October 28, 2021 to do so but with a rider that in the meantime, submissions be filed on the Motion.
12. On October 28, 2021, Mr JV Juma counsel for the Applicants informed the Court that both parties had filed their submissions on the Notice of Motion dated July 29, 2021 and he sought a date for a ruling on the same. Mr Nandwa counsel for the Respondent was not in Court but had intimated that the matter be mentioned on November 10, 2021 which the Court allowed. On that day however, Mr Nandwa did not attend court and although Ms Nabulindo holding his brief asked that the file be placed aside to await him, he appears not to have turned up as nothing else was recorded on that day.



13. By a consent letter dated November 10, 2021 and filed on November 12, 2021, the parties agreed as follows:
  1. There be a stay of execution of the decree herein.
  2. The Respondent do pay half ( $\frac{1}{2}$ ) costs amounting to Kshs 111,408 to the Applicants advocate within 30 days from the date hereof.
  3. That the remaining half ( $\frac{1}{2}$ ) costs be paid dependent on the outcome of the Respondent's application for leave to file appeal out of time.
  4. That in default of 2 above, execution to issue.
14. That consent letter was duly adopted as an order of this court on November 12, 2021. Meanwhile, the matter continued being mentioned before the Deputy Registrar for possible settlement as there was no compliance with the consent orders. Notice to show cause proceedings against the Respondent were instituted for failure to pay the costs.
15. The Applicants then filed a notice of Motion dated May 31, 2022 seeking the main orders that the temporary order of stay of execution issued on September 28, 2021 be lifted and the Applicants be allowed to execute the decree herein. That application was opposed. It was canvassed orally and struck out by Omollo J for being premature.
16. Meanwhile, the Applicants continued to pursue their Notice to show cause against the Respondent before the Deputy Registrar and a warrant for his arrest was issued. He is yet to be arrested and summons were issued to the Officer Commanding Busia Police Station (OCS) to explain why no arrest has been effected.
17. By a Notice of Motion filed in the Court of Appeal Kisumu vide Civil Application NO E052 of 2022, the Respondent's application for extension of time to file the Memorandum of Appeal and record of Appeal against the judgment delivered on October 29, 2020. That application was however dismissed by Kiage JA *vide* a ruling delivered on October 7, 2022.
18. The Applicants have now moved to this Court vide their Notice of Motion dated October 18, 2022 citing Section 3A of the *Civil Procedure Act* and pursuant to the Court Order dated September 28, 2021 and the Consent Order dated November 10, 2021. They seek the following orders:
  1. That the temporary order of stay of execution issued on September 28, 2021 be lifted.
  2. That the Applicants be at liberty to execute the decree issued on October 29, 2020.
  3. That the Respondent be condemned to pay the costs of this application.
19. The application is based on the grounds set out therein and supported by the affidavit of MR JV JUMA.
20. The gravamen of the application is that after obtaining an order of stay herein, the Respondent proceeded to have the said orders registered against the land parcel No Bukhayo/Mundika/351 but did not make any payments towards settling the Bill of Costs. That the Respondents' application to appeal out of time has been declined yet the Applicants cannot execute the decree as the Land Registrar insists on receiving a Court order before he can lift the restriction which he placed on the said land.
21. In his supporting affidavit, Mr JV Juma has basically rehashed the history of this dispute which I have already summarized above. Annexed to the said affidavit are the following documents:



1. Letter dated March 31, 2022 from the Applicants' counsel and addressed to the Land Registrar Busia advising him to lift the restriction.
  2. Letter dated November 10, 2021 from the Respondent's counsel and signed by the Applicants' counsel containing the consent order endorsed by the Deputy Registrar of this Court on November 12, 2021 as an order of this Court.
  3. Ruling of Kiage J.A dated October 7, 2022 in Court of Appeal Application NO E052 of 2022.
22. The application is opposed and the Respondent has filed grounds of opposition dated January 23, 2023 raising the following issues:
1. "That the 1<sup>st</sup> and 2<sup>nd</sup> Applicants were given only 2 acres out of the land parcel No Bukhayo/Mundika/315 which is 6.5 acres but have denied the Respondents access to the remaining 4.5 acres."
  2. "That the Applicants must allow the Respondent access to his 4.5 acres of land parcel NO Bukhayo/Mundika/351 before execution proceeds."
  3. "That the applicants are counterpart (sic) of the judgment passed on October 29, 2020 and have no right of audience before this Court."
  4. "That the Applicants must purge the contempt before being given audience by this Court."
23. When the application was placed before me on February 27, 2023, I directed that it be canvassed by way of written submissions to be filed on or before May 11, 2023 when the matter would be mentioned to confirm compliance. However, only the Applicants' counsel had filed submission when the matter came up for mention.
24. I have considered the application, the grounds of opposition and the submissions by MR JV JUMA which are the only ones on record.
25. The starting point, in my view, is whether there is infact any response to the Applicant's Notice of Motion dated October 18, 2022. That is because, as is clear from the grounds of opposition referred to above, the Respondent only filed grounds of opposition which are supposed to address only issues of law and no more. No legal issues have been referred to in those grounds. Instead, the Respondent has raised issues concerning the acreage of land which the Applicants are entitled to adding that infact the Applicants are in contempt of Court which they must purge before they are heard. He has however not bothered to explain how the Applicants are in contempt of Court. No attempt has been made to rebut the very weighty issues raised in the supporting affidavit of MR JV JUMA. It must therefore be taken that what has been deponed to in that supporting affidavit must be taken to be true and the application is not opposed.
26. In any event, what Mr JV Juma has deponed to are matters of fact clearly obvious from the proceedings herein. It is part of the record. The Respondent is clearly determined to frustrate the Applicants' attempt to execute the decree herein and for almost three (3) years now, he has continued to play cat and mouse games with the Applicants as well as this Court. By a consent order dated November 10, 2021, he was granted a stay of execution that he pays the sum of Kshs 111,408 to the Applicants' advocate being half the taxed costs and in default, execution would issue. He was also indulged with regard to the other half of the costs dependent on the outcome of his application to file his appeal out of time. He did not pay the sum of Kshs.111,408 as agreed and his application to file an appeal out of time was dismissed by Kiage JA on October 7, 2022. It is rather too late in the day for him to allege, as he has attempted to do in his grounds of opposition, that the Applicants are only entitled to 2 acres out of the



land in dispute and are in contempt of orders of this Court. If anything, it is the Respondent who is in contempt of the orders of this Court. If he has any issues with the judgment of Omollo J delivered on October 29, 2020, his option was to file for review or to appeal. The route to an appeal has now been shut following the ruling of Kiage JA delivered on October 7, 2022. He must now face the inevitable consequences and settle the decree herein.

27. Having considered the application dated October 18, 2022, I make the following disposal orders:

1. The temporary orders of stay of execution issued on September 29, 2021 are lifted.
2. The Land Registrar Busia is directed to forthwith remove the restriction which he has placed on the land parcel No Bukhayo/Mundika/351 and facilitate the execution of the decree herein failure to which he shall stand in contempt of the judgment of this Court.
3. The Respondent shall meet the costs of the application.

**RULING DATED, SIGNED AND DELIVERED ON THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2023. THE SAME IS DELIVERED BY WAY OF ELECTRONIC MAIL AS WAS ADVISED TO THE PARTIES ON 11<sup>TH</sup> MAY 2023.**

**BOAZ N. OLAO**

**JUDGE**

