



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ongaga v Mirambo (Environment and Land Appeal E015 of 2022)  
[2023] KEELC 20660 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20660 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND APPEAL E015 OF 2022**

**JM KAMAU, J**

**OCTOBER 12, 2023**

**BETWEEN**

**WILFRED MORARA ONGAGA ..... APPELLANT**

**AND**

**JOSEPH MIRAMBO ..... RESPONDENT**

*(Being an Appeal from the Ruling of the Magistrate's Court at Nyamira by Hon. W.K. Chepseba - CM delivered on the 27th day of September, 2022 in Nyamira CMC MISC. ELC Case No. 24 of 2019)*

**JUDGMENT**

1. This is Appeal from the Ruling of the Honourable W.K. Chepseba, Chief Magistrate – Nyamira in Nyamira CMCC No. 24 of 2019. The same is dated November 8, 2022. In the lower Court, the orders sought in the Appellants' Application dated March 30, 2022 were as follows:-
  1. That the Application is of utmost urgency be certified as urgent and service thereof be dispensed in the first instant and be heard *ex-parte* as such account of urgency.
  2. That the Honourable Court fast track this matter herein and/or protect the Applicant during Hearing/determination of this matter from unlawful threats by his agents, servants and/or employees who are planning to put new allegations against the Applicant to be put to prison.
  3. That temporary injunction be issued against the Respondent, their agents, servants and/or employees from trespassing onto, erecting structures, interfering with and/or in any manner dealing with the suit property until this matter has been heard and determined.
  4. That the Respondent be stopped from raising this matter herein and the criminal already appealed to the High Court outside the court premises.
  5. That the Applicant seeks leave out of time to amend the plaint.



6. Costs be provided for.
2. The Application was supported on the grounds that: -
  - a. That the Applicant avers that his life and that of his family are in total danger of being eliminated and/being framed on fresh crime and/or being imprisoned if protection is not granted by this Honourable Court from the unlawful acts of the Respondent.
  - b. That the Respondent be stopped and/or refrain from threatening the Applicant/his family on the matter herein and/or the appealed one.
  - c. That upon the above grounds the Applicant/his family are living in total fear of their lives without guarantee of their protection.
  - d. That if the Applicant's sought orders are not given the Applicant will suffer substantial loss and damage.
  - e. That if the sought order are given out the Respondent will not suffer and prejudice and/or loss and damage.
3. The Respondent opposed the same *vide* Replying Affidavit sworn on April 14, 2022 filed 5 days later. He deponed that the Application did not disclose any cause of action and that the charges preferred against the Appellant were well founded as he had damaged the Respondent's properties and was therefore lawfully arraigned in Court. The police were therefore not being used for no good reasons. In his Ruling the Honourable Chief Magistrate dismissed the Application on the ground that the Applicant had not shown that he owns the land he was complaining about, nor did he even indicate the L.R. NO. of the land he was claiming to own and that he did not attach a copy of the Draft Amended Plaint he wished to be granted leave to file. I do agree with the Learned Trial Magistrate. Orders are not granted in the abstract or generally. They must be specific. Similarly, one cannot be granted leave to amend a suit without the court being told what amendments are being preferred. I would therefore not fault the Trial Magistrate in his Ruling dated November 8, 2022 and I dismiss the Appeal herein with costs.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 12TH DAY OF OCTOBER 2023.**

**MUGO KAMAU**

**JUDGE**

