



REPUBLIC OF KENYA



**Mwei & another v Kerich (Environment & Land Case
206 of 2016) [2025] KEELC 3898 (KLR) (21 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3898 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 206 OF 2016**

EM WASHE, J

MAY 21, 2025

BETWEEN

FLORENTINA CHEMASUNDE MWEI 1ST PLAINTIFF

PHILIP MWEI METTO 2ND PLAINTIFF

AND

LAZARUS KERICH DEFENDANT

RULING

1. The 2nd Plaintiff (hereinafter referred to as “the Applicant”) filed a Notice of Motion Application dated 04.03.2025 (hereinafter referred to as “the present Application”) seeking for the following Orders; -
 - a. That the firm of Manani, Lilan, Mwetich & Company, Advocates be and is hereby allowed to cease acting for and on behalf of the Plaintiffs herein.
 - b. That costs of this Application be provided for.
2. The prayers sought in the present Application have been supported by the following grounds outlined therein and the Supporting Affidavit of one R.R. Mwetich and can be summarised as follows; -
 - i. The Applicant are unable to ably represent their Client due to the Courts intolerance to give them a hearing to articulate the issues before the Court.
 - ii. The action of intolerance exhibited by the Court is likely to be prejudicial to the Applicant’s Clients as their will not be given adequate audience to ventilate their case.
 - iii. The Applicant is aggrieved that the Court has allowed the execution of the Eviction Orders issued in proceedings that were quashed.



- iv. Due to the execution of the Eviction Orders issued in proceedings that were quashed, the Court has undermined the authority of a Concurrent Jurisdiction and the Rule of law generally, a conduct that the Applicants would not be a party to.
 - v. The manner in which the Court has conducted itself embarrasses the Applicants and therefore makes it impossible for them to represent the 1st and 2nd Plaintiffs.
3. The present Application was served on the Defendant (hereinafter referred as “the Respondent”) who opposed the same by filing a Replying Affidavit dated 06.03.2025 on the following grounds; -
- i. The Respondent’s first ground in opposition of the present Application was that the same is incompetent and fatally defective and should be dismissed with costs.
 - ii. The Respondent pleaded that there were no reasons and/or grounds adduced by the Applicant showing that he had withdrawn his instructions from the firm of Manani, Lilan & Mwetich & Company Advocates.
 - iii. According to the Respondents, the present Application was filed purely to delay the hearing and determination of the main suit as the 1st and 2nd Plaintiffs continue to occupy and use the disputed property contrary to previous lawful orders.
 - iv. The Respondent averred that the main reason why the present Application was filed was because the 1st Plaintiff and the Applicant had failed to obtain favourable Orders from the Court regarding their applications dated 21.01.2025 and 14.02.2025.
 - v. Consequently, if the 1st Plaintiff and the Applicant are of the view that the Court was biased and/or intolerance to them, the proper procedure would be to apply for the Judge’s recusal and/or appeal against the Court’s directions.
 - vi. The Respondent stated that the Orders of the Court issued on the 13.02.2025 directing the 1st Plaintiff and the Applicant to respect the Court Orders regarding the use of the 2 acres and restraining them from using the other 8 acres was fair as the matter was to be fast-tracked for hearing.
 - vii. The Respondent pleaded that the present Application was simply geared to delaying this matter from proceeding to full hearing yet it has been pending for the last 9 years as the 1st Plaintiff and the Applicants are enjoying unlawful occupation and/or use of the disputed property to the detriment of the Respondents who have a lawful claim on the same.
 - viii. In conclusion therefore, the Respondent sought this Court to dismiss the present Application forthwith.
4. The 2nd Plaintiff on whose behalf the present Application was filed similarly filed a Replying Affidavit dated 13.03.2025 opposing the present Application on the following grounds; -
- i. The 2nd Plaintiff/Applicant first and foremost pleaded that the Defendant herein who is named as the Respondent in the present Application did not have any interests in the prayers sought.
 - ii. The 2nd Plaintiff/Applicant pleaded that looking at the prayers sought in the present Application, the firm of Manani, Lilan, Mwetich & Company, Advocates is seeking to recuse itself from acting for the 1st and 2nd Plaintiffs on the grounds that the Court allowed the Respondent to continue enjoying the fruits of a Judgement which had been set-aside on Retired Justice Juma on the 21.10.2003.



- iii. The 2nd Plaintiff/Applicants averred that if the Advocates on record on their own behalf were aggrieved by the decision of the court, then the proper procedure would have been to ask the Court to recuse itself rather than cease acting for their clients.
 - iv. The 2nd Plaintiff/Applicant further stated that the firm of MANANI, LILAN & Mwetich & COMPANY, ADVOCATE obtained instructions more than 9 years ago and the Plaintiffs had invested a lot of money in terms of Legal Fees and it would be punitive for the Court to allow the said firm to cease acting before completion of the matter.
 - v. The 2nd Plaintiff/Applicant further stated that due to the Orders issued on 13.02.2025, one of the beneficiaries of the disputed property who had travelled from the United States of America could not be heard on the hearing date and had to return with the wife to the United States of America for her safety.
 - vi. In conclusion, the 2nd Plaintiff/Applicant sought the Court to dismiss the present Application and instead transfer the file to another Judge.
5. Both the Replying Affidavits dated 06.03.2025 and 13.03.2025 and by the Defendant/Respondent and the 2nd Plaintiff/Applicant respectively were served on the firm of Manani, Lilan & Mwetich & Company, Advocates.
 6. The firm of Manani, Lilan & Mwetich through Advocate R.R. Mwetich filed a Further Affidavit dated 26.03.2025 which stated as follows;-
 - i. The firm of Manani, Lilan & Mwetich & Company, Advocates pleaded that the Respondent herein had admitted to the cutting down of trees and ploughing the suit property and even mocked the Plaintiff's Advocates for not being able to implement the Court Orders.
 - ii. The firm of Manani, Lilan & Mwetich & Company, Advocates stated that the prayers sought in the present Application had no bearing on the Respondent.
 - iii. The firm of Manani, Lilan & Mwetich & Company, Advocates further stated that the Respondent had no right to accuse the 1st and 2nd Plaintiffs for the delay in concluding the dispute before the Court because out of the 9 years, the Respondent had failed to comply with Order 11 for the last 7 years.
 - iv. The firm of Manani, Lilan & Mwetich & Company, Advocates insisted that it upholds the Rule of law and *the Constitution* hence it was aggrieved that the Defendant/Respondent would be allowed to disobey the Orders issued on the 21.10.2003 hence bring chaos and disruption of public harmony.
 - v. In essence therefore, the firm of Manani, Lilan & Mwetich & Company, Advocates and in particular MR.R.R. Mwetich could not reconcile with his conscience to act for the 1st and 2nd Plaintiffs yet the Court allowed lawlessness and disorder to be perpetuated by the Respondent herein.
 7. The Court has indeed carefully perused the pleadings filed herein by the firm of Manani, Lilan, Mwetich & Company, Advocates, the Defendant/Respondent in the present Application and the 2nd Plaintiff herein and identified the issues for determination as follows; -

Issue No. 1- Who is actually the applicant in the present application?

Issue No. 2- Are the prayers in the present application merited?



Issueno. 3- Who bears the costs of the present application?

8. The Court having duly identified the above issues for determination, the same will now be discussed herein below.

Issue No. 1- Who is actually the applicant in the present application?

9. The first issue for determination is who actually is the Applicant in the present Application.
10. To resolve this issue, the Court perused the present Application and clearly notes that the Applicant is the 2nd Plaintiff.
11. However, the Supporting Affidavit sworn in support of the present Application was by one R.R. Mwetich, Advocate who practices in the name and style of Manani, Lilan & Mwetich & Company, Advocates.
12. Upon the present Application being served on the 1st and 2nd Plaintiffs personally by the firm of Manani, Lilan & Mwetich & Company, Advocates, the 2nd Plaintiff in particular came out strongly to state that the present Application was not proper and should not be allowed.
13. The question that arises from this scenario was whether the 2nd Plaintiff who has been named as the Applicant actually instructed the firm of Manani, Lilan, Mwetich & Company, Advocates to prepare and file the present Application.
14. Based on the Replying Affidavit of the 2nd Plaintiff sworn on the 13.03.2025, it is clear in the mind of this Court that the firm of Manani, Lilan & Mwetich & Company, Advocates did not obtain instructions from the 2nd Plaintiff to file the present Application on his behalf.
15. Consequently, it was professionally and ethically wrong for the firm of Manani, Lilan, Mwetich & Company, Advocates to have filed the present Application in the name of the 2nd Plaintiff as the Applicant without his consent and/or instructions and thereby bring unnecessary confusion on the hearing date.

Issue No. 2- Are the prayers in the present application merited?

16. The second issue for determination is whether or not the Court should grant the prayers sought in the present Application.
17. To begin with, it is clear that the present Application was filed without the consent and/or instructions of the 2nd Plaintiff who has been named as the Applicant.
18. In other words, the 2nd Plaintiff who is named as the Applicant is not interested in the prayers sought and has actually deponed as much in his Replying Affidavit dated 13.03.2025.
19. The firm of Manani, Lilan, Mwetich & Company, Advocates has not filed any substantive application in its own name and capacity as a legal firm seeking for any orders from this Court.
20. Although the Court has taken note of the averments by Advocate R.R. Mwetich about his conscious, fidelity to the law and Constitution, it is clear that the said Advocate preaches water and drinks wine.
21. In conclusion therefore, the prayers sought in the present Application are not merited as the 2nd Plaintiff who is alleged to be the Applicant does not need them and they have been sought without his consent and/or Instructions.



22. It is important to also set the record straight about the Orders issued on 13.03.2025 as it seems Advocate R.R. Mwetich and the 2nd Plaintiff have misapprehended the facts and reasoning of the Court in these Orders.
23. The origin of the Orders issued on the 13.03.2025 emanates from the Application dated 21.01.2025 filed by the 1st and 2nd Plaintiffs herein which was placed for Hon. Justice Charles Yano on the 22.01.2025 and upon carefully considering the same, issued an Injunctive Order pending inter-parte hearing on the 06.02.2025.
24. On the 06.02.2025, the matter was placed before this Court for hearing and determination of both the present Application and the substantive suit.
25. The firm of Manani, Lilan, Mwetich & Company, Advocates then informed the Court that the Application dated 06.02.2025 had been served on the Defendant/Respondents,
26. The Defendant/Respondent confirmed service of the Application dated 21.01.2025 and informed the Court that a Replying Affidavit dated 05.02.2025 had been filed in opposition.
27. The 1st and 2nd Plaintiffs/Applicants in the Application dated 21.01.2025 sought for leave to file a Further Affidavit in reply to various issues raised by the Defendant/Respondent which leave was duly granted.
28. The Application dated 21.01.2025 was then fixed for hearing on 13.02.2025 and the Interim Orders issued on the 22.01.2025 were extended by consent on both parties.
29. On the 13.02.2025, the proceedings confirm that both the 1st and 2nd Plaintiffs/Applicants Counsel known as Ms. Salim was granted time to make oral submissions on the Application dated 21.01.2025 and the Respondent's Counsel Ms. Chebet also made her oral submissions.
30. Thereafter, the Court based on the Application dated 21.01.2025 made a Ruling on the following lines;-
 - a. The Injunctive Orders were issued on the 21.01.2025 were varied to the effect that both the Plaintiffs and the Defendant be restrained from cultivating, ploughing, using and or interfering with the vacant 8 acres out of the 10 Acres pending the hearing and determination of the main suit.
 - b. The Defendant/Respondent was granted permission to use 2 Acres within the disputed 10 acres on the property known as LR.NO.11218/2 which consists of the Defendants/ Respondents homestead pending the hearing and determination of the main suit.
 - c. The main reason for issuing the above Orders as captured in the Ruling by the Court was that the disputed portion of land ought to be preserved and no party should derive a benefit over the other when the ownership is in dispute.
 - d. The Court undertook to expedient the hearing of this Old matter by fixing an early hearing date.
31. It should therefore be clearly understood that the Defendant's/Respondent's occupation on the 2 acres within the disputed 10 acres on the LR.NO.11218/2 is not on the basis of any other previous proceedings including Eldoret Chief Magistrates Court Civil Suit No. 373 Of 1994 Or Eldoret High Court Miscellaneous Application No. 37 OF 2002.



32. After the Ruling pronounced by the Court on the 13.02.2025 determining the 1st and 2nd Plaintiffs/Applicants 21.01.2025, the 1st and 2nd Plaintiffs filed a second Application dated 14.02.2025 seeking to review the Court's Ruling dated 13.02.2025.
33. The Application dated 14.02.2025 was duly served on the Defendant/Respondent who opposed the same through a Replying Affidavit dated 25.02.2025.
34. The Application dated 14.02.2025 fixed for hearing on the 27.02.2025 wherein both Ms. Salim representing the 1st and 2nd Plaintiffs/Applicants and Ms. Chebet for the Defendant/Respondents gave their oral submissions.
35. The Court through its Ruling pronounced on the same dated 27.02.2025 found no merit in the Application dated 14.02.2025 and dismissed the same.
36. None of the parties herein has ever Appealed against the said Ruling dated 27.02.2025.
37. In essence therefore, the Court is of the considered view that all the Applications that were filed by the 1st and 2nd Plaintiffs have been handled in accordance with the Civil Procedure Rules and it is surprising that both the 1st and 2nd Plaintiffs and the Advocate are claiming not to be given an opportunity to ventilate their case yet in both their Applications they were given time to file their documents and make oral submissions.
38. Just for record purposes, if any party wishes to seek for a recusal of the Court, it is their right to make the appropriate application which will also be handled and determined on its own merits.

Issueno. 3- Who bears the costs of the present application?

39. On the issue of costs, it is settled law that the same follow the event.
40. However, looking at the conduct of the firm of Manani, Lilan, Mwetich & Company, Advocates as regards the present Application, it is clear that their actions were intentionally geared towards having the hearing scheduled on the 06.03.2025 to be adjourned despite the parties being ready to proceed including one witness who was to testify on behalf of the 1st Plaintiff travelling from the United States of America.
41. Such a conduct by a professional advocate is contemptuous of Court proceedings and the precious judicial time keeping in mind that the suit before the Court has been pending for the last 9 years.
42. Consequently, the Court finds it necessary that the firm of Manani, Lilan, Mwetich & Company, Advocate should not only pay the costs of the Application but also the expenses incurred by the witness from the United States of America and the Court Adjournment fees and the Respondents attendance costs.

Conclusion

43. In conclusion, the Application dated 04.03.2025 be and is determined as follows; -
 - a. the notice of motion dated 04.03.2025 is not merited and therefore dismissed with costs.
 - b. the said witness known as barnabas metto is directed to present all payment receipts of his airtickets from the united states of america to eldoret and the return thereof to the firm of manani, lilan, Mwetich & company advocates within the next 14 days from today's date and copies of the same to be availed in the court file for its records.



- c. the firm of Manani, Lilan, Mwetich & Company, Advocates is further ordered to pay all the travel expenses of one barnabas metto who was a witness that travelled from the united states of america and was present in court on the 06.03.2025 ready to testify within 60 days from today's date.
- d. the firm of Manani, Lilan, Mwetich & Company, Advocates will also pay the court adjournment fees for 06.03.2025 before the next mention date.
- e. the firm of manani, lila & Mwetich & company advocates will pay the defendant's advocates court attendance fees of 06.03.2025 within 21 days from the date of the ruling.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 21ST DAY OF MAY 2025.

EMMANUEL.M. WASHE

JUDGE

In The Presence Of:

Court Ass: Brian

Plaintiff: Ms. Salim Holding Brief Mr. Mwetich

Defendant: Mr. Yego For The Defendant

