



**Mogaka & another v Mogaka & 5 others (Civil Appeal
12 of 2019) [2025] KEHC 16 (KLR) (10 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 16 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 12 OF 2019
SM MOHOCHI, J
JANUARY 10, 2025**

BETWEEN

GEORGE MOGAKA 1ST APPLICANT

KISII NISSAN SERVICES 2ND APPLICANT

AND

HARUN SAISI MOGAKA 1ST DEFENDANT

KISII PRESTIGE SHUTTLE LTD 2ND DEFENDANT

OCS NAKURU CENTRALDEF 3RD DEFENDANT

ELIJAH MOTANYA 4TH DEFENDANT

INSPECTOR GENERAL OF POLICE 5TH DEFENDANT

COUNTY GOVERNMENT OF NAKURU 6TH DEFENDANT

RULING

1. Before me is a Notice of Motion dated 4th October 2024 filed Under Sections 1A. 1B. 3A of the *Civil Procedure Act*, Order 9, Rule 9 Order 22 Rule 22 Order 40 Rules 1 and 4 and 51 Rule 1 of the Civil Procedure Rules 2010, for the following orders:

- i. Spent.
- ii. Spent.
- iii. Spent.
- iv. Spent.
- v. Spent.



- vi. That the Honourable Court be pleased to issue an Order of Injunction restraining the 1st, 2nd, 3rd, 4th and 5th Defendants/Respondents whether by themselves, agents, servants or otherwise howsoever from operating the offices, interfering with the Parking Bay, harassing, distressing and/or hassling the employees of the Plaintiffs/Applicants.
 - vii. That the Officers Commanding Police Stations (OCSs) Central Police Station and Railways Nakuru implement the ORDERS.
 - viii. Cost be provided for.
2. The Application is premised on the following grounds;
- i. That the 1st, 2nd, 3rd and 4th Defendants/Respondents illegally, illicitly and/or unlawfully stormed, raided and/or invaded the premises, offices and/or area of work of the Plaintiffs/Applicants breaking the door, seizing electronic gadgets and cash collection of the day's work.
 - ii. That the 1st, 2nd, 3rd and 4th Defendants/ Respondents locked up the Plaintiffs Applicants office with a different padlock, proceeded to repaint the offices in different colours and changed the name of the business to Kisii Prestige Shuttle thus interfering with the normal business of the Plaintiffs/ Applicant.
 - iii. That the 1st, 2nd, 3rd and 4th Defendants/ Respondents further arbitrarily seized the Plaintiffs/ Applicants Parking Bay as allotted by the 5th Defendant/Respondent and introduced a foreign entity to operate from the said space.
 - iv. That the 1st, 2nd, 3rd and 4th Defendants/ Respondents acted ultra vires, abused their powers and/or acted beyond legal authority.
 - v. That since the stated raid the 1st & 2nd Defendants/ Respondents have been illegally operating, conducting and/or carrying matatu business from the said offices having unlawfully displaced the Plaintiffs.
 - vi. That the actions of the 1st, 2nd, 3rd and 4th Defendants/ Respondents have greatly interfered, affected and/or hampered the business of the Plaintiffs/ Applicants causing immense losses and suffering especially during this matatu business peak season.
 - vii. That it is therefore in the interest of justice that this application be certified as urgent and the Honourable Court be pleased to grant the orders sought herein.
 - viii. That this Application is brought without undue delay and is made in good faith and in the interest of justice and fairness.
3. This Court had observed a conduct unbecoming on the part of the Plaintiff/Applicant when delivering the Ruling on the 27th day of February, 2024 with the parties being directed to take such necessary steps as soon as is practically possible with a view to having this suit heard and determined at full trial without any further delay.
4. The Court had further on the 4th July 2024 consolidated Civil Suit No. 16 of 2024 that had been referred to it by Hon lady Justice P. Gichohi and directed that the Application dated 20th June 2024 was to be heard and considered on its merits by way of filed written submissions and the timelines were accordingly set with a mention date for compliance being fixed for the 17th October 2024.
5. On the 17th October 2024 the Court was notified that the Applicants had been served with a notice of withdrawal of the Application and substantive suit dated 3rd October 2024 in HCC No. 016 of 2024



and as such the Application dated 20th June 2024 stood withdrawn and urged to argue and ventilate its instant Application. The Court fixed a ruling of the Application dated 20th June 2024 to be delivered on the 10th December 2024 which ruling now comes up for delivery.

6. The Application for contempt dated was 4th October 2024 was held in abeyance to await compliance on the Application dated 20th June 2024.
7. On the 14th October 2024 the Applicants Plaintiffs filed a notice of withdrawal of this instant suit.
8. It is thus apparent that the Plaintiffs/Applicants ignored the Courts reprimand of weaponization of litigation, filed a civil suit during pendency of this instant suit with an intention to forum shop and steal a match and upon being redirected back to this Court stealthily filed the notice of withdrawal of the suit.
9. The continued intransigence by the 1st Plaintiff/Applicants calls firm sanction by this Court in the nature of adverse cost order.
10. This Court cannot thus continue entertaining interlocutory motions in the face of the filed notices of withdrawal dated 3rd October 2024 and 14th October 2024.

Conclusion and Determination

- i. Owing to the foregoing reason(s) this Court is inclined to allow and adopt the two notices of withdrawal as filed dated 3rd October 2024 and 14th October 2024.
- ii. The 1st Plaintiff/Applicant is hereby condemned to pay the costs of the consolidated suit.
- iii. This Suit shall be marked as withdrawn.

It is so ordered.

SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 10TH DAY OF JANUARY, 2025.

MOHOCHI S.M
JUDGE

