



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muturi v Jepchumba & 5 others (Petition 18 of 2023)  
[2025] KEHC 5653 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5653 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
PETITION 18 OF 2023**

**RK LIMO, J  
MAY 8, 2025**

**BETWEEN**

**PAUL MWANGI MUTURI ..... PETITIONER**

**AND**

**JUDY JEPCHUMBA & 5 OTHERS & 5 OTHERS ..... RESPONDENT**

**RULING**

1. Judy Jepchumba, the 1<sup>st</sup> Respondent and the applicant herein has moved this court vide Chamber Summons dated 27/3/25 asking for the following reliefs namely;
  - i. Spent
  - ii. That this Honourable Court do issue conservatory orders directing that KBP 479W be preserved at Kitale Police Station pending the hearing and determination of the petition filed herein.
  - iii. Any other order the court may deem fit and just taking all the exceptional circumstances in this case into account.
  - iv. Costs.
2. The applicant has listed the following grounds as a basis for the prayers sought;
  - a. That the petitioner through fraud and misrepresentation transferred the ownership of motor vehicle Reg. No.KBP 479P without authority from the first Respondent.
  - b. That illegally acquired property is not protected under Article 40(6) of the *Constitution*.
  - c. That the petitioner has not come to court with clean hands and he has misused and wasted the said motor vehicle.



- d. That the petitioner has failed to prosecute his petition expeditiously warranting this application.
- e. That is it in the interest of justice and proper use of judicial time to issue the conservatory order.
3. In her supporting affidavit sworn on 26/3/25 the applicant avers that the petitioner/respondent used to supervise her farming during her absence in Kenya and that as a consequence she entrusted him with personal documents like the ID Card, ATM, Birth Certificate and SIM Card.
  4. She depones that the petitioner/respondent took advantage of her and the long distance to do several fraudulent transactions including fraudulent transfer of motor vehicle Reg No.KBP 497W to his name.
  5. She also lists other transactions/activities which she says were fraudulent.
  6. She further states that the petitioner has misused the said motor vehicle by removing front guards, reflectors and carrier back on top of the vehicle without her permission.
  7. She submits that the said motor vehicle belongs to Roston Farm P O Box 7254 Kitale and points that the name is still imprinted on the front door as demonstrated by the pictures she has exhibited in the affidavit in support of this application.
  8. She further submits through learned counsel Mr Ondieki that the petitioner has not demonstrated how he acquired the motor vehicle in dispute insisting that it belongs to her.
  9. She avers that there is no transfer form or authority displayed showing that the transfer effected by the petitioner was authorized or lawful. She asks that the motor vehicle should be kept in a safe custody to preserve it arguing that the principle of proportionality is in favour of keeping the motor vehicle in a neutral safe ground to avoid wastage and misuse.
  10. The petitioner/respondent has opposed this application through an affidavit sworn on 15/4/25 where he has raised several issues. I will however for the interest of judicial time highlight the pertinent issues which I consider relevant or important in the matter before me.
  11. The respondent avers that he is registered owner of the disputed motor vehicle and has exhibited a copy of logbook to buttress the assertion. He denies the contention that he has misused the motor vehicle stating that it is in good use.
  12. He avers that the issues concerning ownership of the disputed vehicle is pending in the lower court vide Kitale CMCC No.425 of 2023 and that the applicant is claiming Kshs.600,000/- as the value of the disputed motor vehicle from him.
  13. He submits that the suit in the lower court is pending for determination and contends that the application before court is sub judice.
  14. The petitioner also contends that the application before court lacks substratum because the applicant has not filed a cross-petition herein upon which she can anchor her application.
  15. He further contends that there is no evidence to show that the applicant is the owner of Roston Farm adding that Roston Farm is not a party in this petition.
  16. He through learned counsel Mr Bikundo submits that the documents exhibited by the applicant are not serialized and commissioned. He asks this court to expunge them adding that the affidavit in support of the applicant is also incompetent for want of proper commissioning.



17. This court has considered this application and the response made. This court has perused through the documents annexed to the application and the replying affidavit to the petition herein sworn on a date that is not clearly legible. It is quite apparent that the applicant's allegations could be genuine and deserve a proper consideration and interrogation.
18. However the application as presented has no legs upon which to stand on or substratum. The applicant has simply ridden on a petition filed by the petitioner where he alleges that his constitutional rights have been infringed.
19. The applicant however has not filed a cross-petition to show or demonstrate that her rights have been violated as well or show existence of any threat(s) to infringe any of her rights by the petitioner. If the petitioner, who is well represented by a counsel, and senior at the bar, felt that her rights had been violated, there was nothing preventing her from either filing a cross-petition not just to oppose the petition but to pursue her own rights and proceed to then apply for conservatory order pending the determination of the cross-petition.
20. Filing an application based on a petition belonging to someone else, is ill advised because what would be the fate if say the petitioner was to abandon or even withdraw the petition altogether? In the petition filed, this court is being asked to determine infringement of rights, of the petitioner and no one else.
21. The applicant through her counsel insists that her application is based on the provisions of Rule 21 and 24 of the *Constitution of Kenya (protection of Rights and Fundamental Freedoms) practice and Procedure Rules, 2013* commonly referred to as "Mutunga Rules" but the said Rules only relate to Rules of Procedure to enable parties know how to approach court for enforcement and protecting of their Constitutional or fundamental rights and freedoms as enshrined in the *Constitution*. A party is required to state briefly the background of his petition, cite the specific constitutional rights either infringed or facing threats of contraventions and by whom and state the reliefs sought to stop the infringement or enforce the rights whatever the case may be.
22. The applicant cannot therefore invoke the rules of procedure without specifying the actual rights infringed. The omission by the applicant to correctly and properly plead her case before me is unfortunately fatal to her application. The application in the absence of an anchorage cannot be sustained. It is simply incompetent and there is nothing this court can do.
23. As I have observed, the applicant is well represented by counsel who should be able to advise on the options open to her for remedy.
24. This court also finds it important to make a finding with respect to the issue of subjudice raised by the respondent.
25. The petitioner has averred that there is a suit pending filed by the applicant in the lower court vide Kitale CMCC No.425 of 2023 where the disputed motor vehicle is part of the subject matter. The applicant's counsel conceded to this fact but stated that with the release orders made in this court the lower court might feel intimidated to give contrary orders. However with respect I disagree for 2 reasons namely;
  - i. Firstly the release order made in this petition was made pursuant to a petition filed on allegations of infringements of constitutional rights.
  - ii. Secondly, the issues before the lower court are distinct and different from the issues in this appeal. The trial court is therefore not bound by the temporary orders given by Hon. Mrima J to have the disputed motor vehicle released.



26. The application before me is premised on ownership of the disputed motor vehicle. That issue of ownership is also an issue in the lower court's case. This court cannot at this stage entertain that issue because the matter is sub judice by operation of the provisions of Section 6 of the Civil Procedure Act.

From the foregoing, this court finds that the application dated 27/3/2025 is fatally defective and incompetent. The same is struck out but I will not make any order as to costs for the interest of justice.

**DELIVERED, DATED AND SIGNED AT KITALE THIS ... 8<sup>TH</sup> DAY OF MAY , 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Ruling delivered in open court

In the presence of;

Bikundo for respondent

Oyaro holding brief for Ondieki for applicant

Duke/Chemosop – Court assistants

