



**City Manager, County Government of Kenya & 3 others v Manyala & 3 others
(Suing as Members of Kibuye Traders) (Environment and Land Miscellaneous
Application E001 of 2025) [2025] KEELC 3854 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3854 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2025
E ASATI, J
MAY 15, 2025**

BETWEEN

**CITY MANAGER, COUNTY GOVERNMENT OF KENYA 1ST APPLICANT
CITY BOARD 2ND APPLICANT
COUNTY EXECUTIVE COMMITTEE MEMBER FOR TRADE COUNTY
GOVERNMENT OF KISUMU 3RD APPLICANT
COUNTY GOVERNMENT OF KISUMU 4TH APPLICANT**

AND

**HAMILTON OMONDI MANYALA 1ST RESPONDENT
ESTHER AKINYI AGOLA 2ND RESPONDENT
RASHID OTIENO BONGO 3RD RESPONDENT
CHRISTINE AKOTH BONGO 4TH RESPONDENT
SUING AS MEMBERS OF KIBUYE TRADERS**

RULING

1. Vide Notice of Motion dated 4th May 2025 the applicant sought for an order to set aside, vary and/or discharge conservatory orders issued on 2/5/2025 in Kisumu Environment and Land Court Petition E002 of 2025 and for the court to make an order closing Kibuye Market.
2. In response to the application, the Respondents filed, inter alia, a Notice of Preliminary Objection dated 8th May 2025 seeking that the application be struck out on grounds that; -



- a. The application is bad in law as the applicant seeks the court to sit on appeal on its orders which were made after a proper hearing was conducted.
 - b. That substantive orders cannot be reviewed through a Miscellaneous application.
 - c. That the application is an abuse of the process of the court.
 - d. That the application has been brought to derail Petition ELC 02 of 2025.
3. By Consent of the parties, the Preliminary objection was given precedence and argued orally on 9/5/2025.
 4. Counsel for the Respondent submitted that there is already a petition existing in which the court granted the orders sought to be reviewed. That applications have to be brought through the prescribed rules and that established rules and procedures should be followed. That the court gave orders on 2/5/2025 in the presence of Counsel for the applicant and that it is an abuse of court process for the applicant to file another matter through different Counsel. That the matter before court is for appeal and not for review. That article 159 of *the Constitution* is not a remedy for applications which are unfounded.
 5. On behalf for the applicant Counsel relied on the provisions of article 159(2) of *the Constitution* and submitted that the application was brought to safeguard the Respondents. That time was not on the applicants' side so the applicants decided to file the Miscellaneous application. Counsel relied on the case of *Raila Odinga -vs- IEBC*.
 6. I have considered the Preliminary Objection and the submissions made by both parties. There is no dispute that Petition No ELC Pet No. E002 of 2025 between the same parties and over the same subject matter exists and that the orders sought to be reviewed herein were issued in the petition.
 7. The applicant's explanation for not filing the present application in the already existing Petition was that time was not on applicant's side. This explanation is however not satisfactory. In my view more time would be required to institute a new matter than to file an application in an already existing matter. While the court appreciates the gravity of the subject matter of the application, it is paramount that parties approaching the court for relief must do so within the established rules and procedures. To operate otherwise would be to invite chaos and confusion in the administration of justice. It will be totally un-procedural for this court to entertain in this cause an application seeking to review orders issued in a different cause.
 8. I find that the Miscellaneous Application is improperly before court.
 9. I hereby uphold the preliminary objection and strike out the Miscellaneous Application. No order as to costs.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA AND READ VIRTUALLY THIS 15TH DAY OF MAY 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

**E. ASATI,
JUDGE.**

In the presence of:

Ajevi Court Assistant.

M/s Atieno for the applicants.



Mwamu for the Respondents.

