



**Karauka t/a Karauka & Co Advocates v Kenya Miraa Farmers & Traders Association of Kenya (KEMIFATA); Munjuri (Suing for and on behalf of Nyambene Miraa Trade Association-Nyamita) (Applicant); Nyambene Miraa Traders Association (Nyamita) (Interested Party) (Miscellaneous Application 25 of 2018) [2023] KEHC 19730 (KLR) (Constitutional and Human Rights) (7 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19730 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
MISCELLANEOUS APPLICATION 25 OF 2018**

**LN MUGAMBI, J**

**JULY 7, 2023**

**BETWEEN**

**HENRY KARAUKA T/A KARAUKA & CO ADVOCATES ..... APPLICANT**

**AND**

**KENYA MIRAA FARMERS & TRADERS ASSOCIATION OF KENYA  
(KEMIFATA) ..... RESPONDENT**

**AND**

**KIMATHI MUNJURI (SUING FOR AND ON BEHALF OF NYAMBENE MIRAA  
TRADE ASSOCIATION-NYAMITA) ..... APPLICANT**

**AND**

**NYAMBENE MIRAA TRADERS ASSOCIATION (NYAMITA) .... INTERESTED  
PARTY**

*(Being an application for review of the order and/or decree of the High Court in Petition Misc. No. 25 of 2018 issued by Hon. Mumassaba, Deputy Registrar on 6th June, 2019)*

**RULING**

1. The Notice of Motion application dated 29<sup>th</sup> January, 2019 was filed by one Joseph Kimathi Munjuri. He describes himself as the National Chairman of Nyambene Miraa Trade Association-NYAMITA. He is represented by the firm of Kobia Michubu & Co. Advocates. The application was brought against the firm of Henry Kurauka T/A Kurauka & Co. Advocates.



2. The Notice of Motion sought the following orders: -
  - i. Spent.
  - ii. THAT the honourable court be pleased to grant leave to the applicant to come on record in (Const. & Human Rights Division) Petition Misc. No. 25 of 2018 as an interested party.
  - iii. THAT the notice of appointment herein attached be and is hereby deemed as duly filed and properly on record.
  - iv. THAT the honourable court be pleased to grant leave to the applicant to file the intended application for review, out of time, against the orders issued by Hon. Mumassaba, Deputy Registrar on 6 June 2019 in Petition Misc. No. 25 of 2018.
  - v. THAT the honourable court be pleased to deem the intended review application herein attached as properly filed and as properly on record.
  - vi. THAT the honourable court be pleased to allow the leave herein issued operate as a stay of proceedings and/or orders in regard to all suits arising and/or related to matters in respect of (Const. & Human Rights Division) Petition Misc. No. 25 of 2018 herein pending the hearing and determination of the review application subject herein.
  - vii. THAT the honourable court be pleased to issue an order barring all transactions in respect of Co-op Bank-Maua Branch A/C No. 011-204-149-217-00, pending the hearing and determination of the application herein.
  - viii. THAT the honourable court be pleased to issue an order barring all transactions in respect of Co-op Bank-Maua Branch A/C No. 011-204-149-217-00, pending the hearing and determination of the intended review application.
  - ix. THAT the Honourable Court be pleased to order the branch manager, Co-op Bank, Maua branch to reverse the transaction and/or recover all the money paid to Kurauka & Company Advocates on the basis of the decree and/or orders of this Court issued on 6<sup>th</sup> June, 2019.
  - x. THAT the costs of this application be borne by the respondents.
3. The application is supported by the affidavit of Joseph Kimathi Munjuri sworn on 29<sup>th</sup> January, 2020.
4. In brief, the Notice of Motion application sought to reverse the decision made by the Deputy Registrar of this court, Hon. Mumassaba, on 6<sup>th</sup> June, 2019.
5. The Notice of Motion indicates that it was brought under the following provisions (Articles 22, 23, 27 (1, 4, 5 & 40 (2) of *the Constitution*, Section 79, 89, 90 (1, 2, 3, 4), 94 & 96 of the *Land Act*, Sections 27, 28 & 29 of *Land Registration Act*, and under Sections 3 & 3A of *Civil Procedure Act*, Order 10 rule 11, Order 40 Rules 1 & 2, Order 42, Rules 6,7,8,9 and Order 51 Rule 1 of the Civil Procedure Rules).
6. The Notice of Motion specifically targets for review orders issued by the Deputy Registrar that directed that the taxed Advocate-Client Bill of Costs for the firm of Henry Kurauka & Co. Advocates be



settled from funds held in Co-operative Bank Account Number 011-204-149-217-00, Maua Branch. The order was made on the basis that the advocate rendered legal services to the clients, Kenya Miraa Farmers and Traders Association (KEMIFATA) by representing them in Milimani High Court Petition Number 442 of 2018.

7. The Notice of Motion application was scheduled for hearing on on 8<sup>th</sup> August, 2020 but was not heard. This is because the firm of Henry Kurauka & Co. Advocates filed a Notice of preliminary objection dated 9<sup>th</sup> June, 2020 challenging it on the following grounds: -
  - i. That the application is superfluous, incompetent, frivolous, vexatious and fatally defective.
  - ii. Application was brought under wrong provisions of the law and the same is misconceived.
  - iii. The applicant has not shown interest therein as he is neither a beneficiary not a signatory to the said account.
  - iv. Applicant was not a party in the proceedings and could thus not seek orders in an application.
  - v. Applicant sought to challenge execution of orders dated 4<sup>th</sup> June, 2019 but not the orders of 1<sup>st</sup> April, 2019 by Hon. Justice Makau hence application is vexatious and a gross abuse of court process.
  - vi. Applicant is seeking orders that cannot reasonably be granted in a judicial process.
  - vii. Applicant pleadings are poorly drafted, lacking in flow and logic and scandalous, vexation, sham and embarrassing. The supporting affidavit was sworn on a different date and purports to support the application which is given a different date.
  - viii. The application be dismissed with costs assessed at Ksh.100,000/-.
  
8. The applicant (now respondent) in the preliminary objection filed the grounds of opposition dated 8<sup>th</sup> August, 2020 as follows: -
  - a. THAT the said Preliminary Objection lacks merit and is devoid of content.
  - b. THAT the objection is misconceived, ignorant, bad in law and an abuse of the court process.
  - c. THAT the objection is made with unclean hands and without disclosure of material facts of the case to the court.
  - d. THAT the objection is frivolous, vexatious and only meant to derail justice.
  - e. THAT if the objection is allowed, the interested party's right to be heard shall be infringed upon and obliterated hence shall suffer irreparable damage and loss.
  - f. THAT the interested party herein avers that he is the National Chairman of Miraa Lobby group and an international miraa trader per excellence and as



such, he demands respect and recognition and right of say and right to be heard in public matters with special interest in Miraa.

- g. THAT the gist of the applicant's application is the orders issued by Hon. Mumassabba directing money to be deducted from an account belonging to miraa stakeholders who were not party to the suit thus the interested party has reason to be interested by Hon. Makau's orders since they ought to be effected against the defendant herein.
  - h. THAT the interested party herein avers that the subject issue in the matter herein is in the nature of public interest and/or relate to funds running into millions of shillings which may have already been lost thus occasioning great loss and damage to the miraa community hence the basis of the interest to join the suit herein and have the funds reimbursed and/or returned.
  - i. That the objection herein is not grounded on any substantive law but mere assertions and myopic imaginations for fear of the truth.
  - j. That is it only fair, just and in the best interest of justice, rule of law and the public to have the application heard on its merits.
  - k. That the objection ought to be dismissed for want of substratum, being bad in law, frivolous and vexatious and only a means of sap more money from the Miraa Stakeholders, unfairly and unlawfully.
9. On 30<sup>th</sup> September, 2020; the proponent of preliminary objection, Kurauka and Co. Advocates was directed by Makau, J to file and serve submissions in respect of the preliminary objection within fourteen (14) days and a mention to confirm compliance was fixed for 19<sup>th</sup> October, 2020.
  10. On 19<sup>th</sup> October, 2020, Mr. Kurauka confirmed filing his submissions as directed. Thereafter there were further mentions on 3<sup>rd</sup> February, 2021 and 13<sup>th</sup> July, 2021 but the respondent in the preliminary objection never showed up.
  11. A mention on 26<sup>th</sup> October, 2021 was scheduled and the advocate for respondents in the preliminary objection Mr. Kobia appeared on that day. The Judge ordered the parties to confirm that their submissions were on record by the next mention date, which was fixed for 28<sup>th</sup> February, 2022.
  12. On 28<sup>th</sup> February, 2022; the court noted that the parties had not complied with filing of submissions. There was no appearance by the respondent in the preliminary objection.
  13. On 26<sup>th</sup> July, 2022, the Deputy Registrar referred the matter to the Presiding Judge for re-allocation. The Judge noted the absence of advocate for the respondent and granted 10 days within which he was to file his submissions. That was marked the last chance. The matter was fixed for mention on 7<sup>th</sup> February, 2023.
  14. On 7<sup>th</sup> February, 2023, the matter went before the deputy Registrar, T. Marienga. The Deputy Registrar extended the mention date to 29<sup>th</sup> March, 2023.
  15. On 29<sup>th</sup> March, 2023, all the counsels appeared – Nyaga for the applicant in the Preliminary Objection and Mr. Kobia for Kimathi Munjuri (the Chairman Nyambene Miraa Trade Association), the respondent in the preliminary objection.



16. After listening to the counsels, the Court directed Mr. Kobia to file submissions within 14 days. The matter was then allocated to this court. Mr. Nyaga was granted seven (7) days to file supplementary submissions if he considered them necessary.
17. On 15<sup>th</sup> May, 2023, the matter was mentioned before this court whereby only the advocate for the proponent in the preliminary objection appeared, that is Mr. Nyaga. No appearance by the respondent counsel in the preliminary objection.
18. This court after perusing the record noted as follows: -
 

“On 29<sup>th</sup> March, 2023, advocate for the respondent Mr. Kobia was granted 14 days to file submissions in respect of the preliminary objection dated 9<sup>th</sup> June, 2020. The respondent has not appeared, neither has he filed the submissions as directed. The advocate for the respondent was present when directions were read requiring filing of submissions within 14 days. I, thus fix this matter for ruling on 7<sup>th</sup> July, 2023.”
19. As at the time of writing this ruling, the advocate for the respondent in the preliminary objection dated 9<sup>th</sup> June, 2020 had not filed any submissions.
20. Consequently, only the submissions of the proponent of the preliminary objection were available for consideration by this court.
21. In brief, the applicant submitted that the Notice of Motion discloses no reasonable basis for the intended joinder or reversal of the orders of execution. He argued that the basis upon which the application is founded is imprecise, groundless and thus vexatious.
22. He further contended that the applicant never challenged orders made by Makau, J. but only based his challenge on the orders of the Deputy Registrar which were issued consequent upon the order of Justice Makau. He submitted that the orders made were valid and needed to be obeyed by those to whom they are directed unless and until they are discharged. He cited the case of Econet Wireless Kenya Ltd V Minister for Information and Communication of Kenya and another (2005) I KLR 828; Refrigerator & Kitchen Utensils Ltd. vs. Gulabchand Popatlal Shah & Others Civil Application No. Nai. 39 of 1990; Wildlife Lodges Ltd Vs County Council of Narok & Another (2005) 2 EA 344
23. He also relied in the case of Mohamed Aktar Kan Vs Attorney General, Nairobi HCCP No. 544 of 2010 and Central Bank of Kenya & another Vs Ratilal Automobiles Limited & Others, Civil Application No. Nairobi. 247 of 2006 which equally emphasized the duty to obey court orders.

### **Analysis and Determination**

24. The suit that gave rise to the order for payment of Advocate-Client Bill of costs after taxation by the Deputy Registrar was filed by Kenya Miraa Farmers Association of Kenya (KEMIFATA) as petitioner against the National Agency for Campaign Against Drug Abuse (NACADA), as 1<sup>st</sup> respondent, Attorney General was the 2<sup>nd</sup> Respondent and Dr. William N. Okedi, the 3<sup>rd</sup> Respondent.
25. That is discernible from the pleadings.
26. The notice of motion dated 29<sup>th</sup> January, 2020 against which the preliminary objection is raised was brought by the Joseph Kimathi Munjuri who in the supporting affidavit to his Notice of Motion describes himself as the National Chairman of a Miraa lobby group known as Nyambene Miraa Traders Miraa Association, abbreviated NYAMITA.



27. He sought leave to be enjoined as an interested party in Misc. Application No. 25 of 2018 whereby an order directing Co-operative Bank Manager Maua Branch was issued directing the Bank Manager to pay the taxed Advocate-Client bill.
28. The legal fees which the court adjudged payable to the said advocates was to be paid by the instructing client (kemifata). Nyamita which the applicant claims to represent did not feature either in the main petition or in the miscellaneous application on taxation.
29. The respondent now comes long later after execution was done and dusted and belatedly claims a stake or interest in the said on behalf of Miraa lobby group called Nyamita.
30. Under Rule 8 of *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 Court's inherent power to prevent abuse of the Court process is preserved. It provides:  
Rule 8 - 'Nothing in these rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court'
31. The respondent has not alleged ownership of that account or by the lobby group he claims to represent. He has also not denied the nexus between that Account and KEMIFATA, the Advocates instructing client.
32. The Respondent does not even allege that the said lobby group has affiliation with KEMIFATA which the Advocate represented.
33. Instead, the Notice of Motion makes a sweeping statements to the effect that Nyamita represents stakeholders who had interest in the funds held in that account without precisely defining the nature and extent of that interest.
34. Bullen & Leaks (12<sup>th</sup> Edition) has defined a 'frivolous pleading' as one that is without substance or groundless.
35. The said Notice of Motion makes nebulous generalized allegations. It is a hopeless pursuit that has no reasonable prospect of success. In D.T. Dobie & Company Limited Vs. Muchina 1982 KLR, the Court of Appeal held that a cause of action will not be considered reasonable if it does not state facts as to support the claimed prayer. The respondent's notice of motion application fails to plead facts that can sustain the prayers for intended joinder or review. It is an abuse of the court process by stranger who is unable to plead even facts that clearly demonstrate his interest in subject matter.
36. Additionally, there is obvious lack of interest by the respondent to pursue the matter going by the conduct he has exhibited so far. He has failed to appear severally in court including filing his submissions in this Preliminary objection despite being indulged by the Court severally.
37. The said Notice of Motion is expressed as having been brought under various provisions of law including Sections 79, 89, 90 (1, 2, 3, 4) 94, 95 of the *Land Act* and Sections 27, 28, 29 of the *Land Registration Act* which are totally irrelevant to the application. It is probably illustrative of the incurious approach that has generally been depicted by the respondent in not only the manner that the notice of motion is set out but also in the general lack of any serious effort to participate in these proceedings since filing the said application.
38. I uphold preliminary objection. I find the Notice Motion Application dated 20/1/2019 to be frivolous and an abuse of court process. I hereby dismiss it with costs.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 7<sup>TH</sup> DAY OF JULY, 2023.**



**L.N MUGAMBI**  
**JUDGE**

