



REPUBLIC OF KENYA



Trustees of the Muslim Association Nakuru v Khan (Miscellaneous Civil Application E312 of 2024) [2024] KEHC 15896 (KLR) (16 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15896 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E312 OF 2024
JM NANG'EA, J
DECEMBER 16, 2024**

BETWEEN

THE TRUSTEES OF THE MUSLIM ASSOCIATION NAKURU APPLICANT

AND

MOHAMMED NAZIR KHAN RESPONDENT

RULING

1. For determination is the Notice of Motion dated 27th September 2024 by which the applicant prays for the following reliefs;-
 1. Spent
 2. Spent
 3. A Permant Injunction restraining the Respondents from interfering with the management and administration of properties belonging to the Muslim Association, Nakuru.
 4. A Mandatory Injunction directing the respondent to release to the applicant all its documents in his possession, including title deeds and certificates in respect of the following properties;-
 - a. Nakuru Municipality Block 15/943
 - b. Nakuru Municipality Block 15/942
 - c. Nakuru Municipality Block 15/872
 - d. Nakuru Municipality Block 5/137
 - e. Nakuru Municipality Block 13/341
 - f. Nakuru Municipality Block 451/198



- g. Nakuru Municipality Block 451/1291
 - h. Nakuru Municipality Block 7/206
 - i. Nakuru Municipality Block 519/220/1
 - j. Nakuru Municipality Block 10/180
5. That the cost of the motion be provided for.
2. When the application came up for directions on 30th October, 2024, the Applicant's Legal Counsel informed the court that despite serving the same on the Respondent as directed, no reply had been filed and/or served upon them. The court was urged to allow the Application as prayed being unopposed. The court slated its ruling for 9th December, 2024 but did not sit on this date.
3. The court has, however, noted that the Respondent filed an Affidavit in reply on 6th December, 2024 through the court's e-filing portal. At the same time, the Respondent also took up a Preliminary Objection to the suit and filed his submissions. He contends in his objection that the Application is brought before the wrong forum; that there is no suit and/or substratum on which to anchor the application and further that granting the Application would violate the Applicant's constitution. The court was thus urged to strike out the Application for being fatally defective.
4. The Return of Service of the Application the applicant filed online shows that the Defendant was served on 15th October, 2024. The Respondent therefore took too long to put in his reply. It is, however, noted that the court did not set a timeline within which the reply would have been filed and served.
5. The above observations notwithstanding, the court suo moto finds that this Application is defective and thus incompetent. Order 40 rule 1 of the Civil Procedure Rules 2010 provides inter alia, that where in a suit it is proven by evidence that any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, the court may grant temporary conservatory orders pending determination of the suit. The law therefore contemplates the existence of a substantive suit in which an application for injunction is made.
6. The Application is accordingly bereft of the necessary substratum and it is struck out. As the Respondent took unreasonably long to file his reply, no orders is made as to costs.

J.M NANG'EA , JUDGE.

RULING DELIVERED VIRTUALLY THIS 16TH DAY OF DECEMBER, 2024 IN THE PRESENCE OF:

Advocate for the Applicant, Mr. Abuya

Advocate for the Respondent, Mr. Biko

Court Assistant, Mr. Lepikas

J. M NANG'EA, JUDGE.

