



Moror & 9 others v Chairman Kajiado County Land Board & 3 others; Kironua & 9 others (Interested Parties) (Judicial Review 968 of 2017) [2025] KEELC 4504 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4504 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
JUDICIAL REVIEW 968 OF 2017
LC KOMINGOI, J
JUNE 12, 2025**

BETWEEN

- NKAITOLE MOROR 1ST EXPARTE APPLICANT**
- NTUIYOTO MARASWA 2ND EXPARTE APPLICANT**
- MOKARESESERINA 3RD EXPARTE APPLICANT**
- NKUKATKAKURO 4TH EXPARTE APPLICANT**
- TARAIYAMPAPA 5TH EXPARTE APPLICANT**
- JOSEPH KARANTEI 6TH EXPARTE APPLICANT**
- JOSHUA PARMERE 7TH EXPARTE APPLICANT**
- RAINGTPLEMGA 8TH EXPARTE APPLICANT**
- JEREMIA MORORO 9TH EXPARTE APPLICANT**
- MAILUA GROUP RANCH 10TH EXPARTE APPLICANT**

AND

- CHAIRMAN KAJIADO COUNTY LAND BOARD 1ST RESPONDENT**
- COUNTY LAND ADJUDICATION OFFICER 2ND RESPONDENT**
- THE CHIEF LAND REGISTRAR 3RD RESPONDENT**
- THE ATTORNEY GENERAL 4TH RESPONDENT**

AND

- DANIEL KOIKAI KIRONUA INTERESTED PARTY**
- CHRISTOPHER K SAIGOL INTERESTED PARTY**



SHAPAPAMPAPA	INTERESTED PARTY
JOSHUA LENGETESARBABI	INTERESTED PARTY
KOILEKENSEMPETA	INTERESTED PARTY
PARMERES NINA	INTERESTED PARTY
MEIBUKOMOSILA	INTERESTED PARTY
TOBIKO NKULANA	INTERESTED PARTY
MASHIPEITIRATI	INTERESTED PARTY
SINJALE OLE KANORE	INTERESTED PARTY

RULING

1. This Ruling is in respect of the Notice of Motion dated 15th April 2024, by the 2nd Ex parte Applicant. It is brought pursuant to Article 50 and 159 of *the Constitution*; Section 1A and 3A of the *Civil procedure Act*; Order 10 Rule 10 and 11, Order 12 Rule 7 and Order 51 rule 1 and 6 of the Civil Procedure Rules; Section 3 and 13 of the *Environment and Land Court Act* and other enabling provisions of the law.
2. It seeks orders;
 - i. That the Honourable Court be pleased to stay and/or suspend sentencing and the Notice to Show Cause why the 2nd Ex parte Applicant / Applicant should not be cited for contempt pending hearing and determination of the Application.
 - ii. That the Honourable court be pleased to vacate, vary and/or set aside its order given on 13th July 2023 which found the Applicant in contempt of the orders of the Honourable court of issued on 16th November 2016.
 - iii. That costs of the Application be provided for.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to 10. It is also supported by the sworn Affidavit of the 2nd Ex parte Applicant Ntuyoto Maraswa. The Ex Parte Applicant (hereinafter known as ‘the Applicant’) seeks the setting aside of this Court’s Ruling delivered on 13th July 2023 ordering him to show cause why he should not be cited for contempt for failing to comply with orders dated 8th December 2016. He avers that in a Notice of Motion application dated 20th November 2016, the Ex parte applicants sought orders to quash Mailua Group Ranch’s elections conducted in 27th October 2015.
4. He states that as a pastoralist who frequently travels outside Kenya in search of pasture and water, he lost touch with the proceedings of this matter until later when he discovered that R. Nyakundi J. delivered a judgment dated 16th November 2016. In this judgement, the Ex-parte Applicants were, among other orders, directed to deposit the documents of the Group Ranch with the 2nd Respondent, (the County Land Adjudication Officer). He also discovered that the Ex-parte Applicants aggrieved with this judgement filed an appeal Nairobi Court of Appeal vide; Civil Application No. 260 of 2016 - Nkaitole Moror & Others v Chairman Kajiado County Land Board & Others, seeking a stay of execution pending appeal. However, the Appeal was withdrawn as parties tried to engage in negotiations with a view of settling the dispute out of Court.



5. He was therefore stunned to be served with an order from this court issued on 13th July 2023 following a Notice of Motion dated 19th December 2016 seeking contempt orders against him on grounds that he had refused to comply with the orders issued on 16th November 2016.
6. He avers that after receiving the Notice to Show Cause, he perused the Court file and discovered that the Notice of Motion dated 19th December 2016 was supposed to be served upon him. He claims he was not served and could therefore not respond. It is his case that he was condemned unheard contrary to his right to a fair hearing as provided for under Article 48 and 50 of *the Constitution*. Further, his purported sworn Replying Affidavit dated 8th march 2023 filed by M/s Omwoyo, Momanyi Gichuki Advocates was not his because he neither instructed the said Advocates to represent him nor did he sign the Affidavit. He further stated that it was only until 1st February 2024 that he instructed M/s Naikuni Ngaah and Miencha Co. Advocates to represent him.
7. He therefore prays that the contempt orders given on 13th July 2023 should be set aside and the Notice of Motion dated 19th December 2016 be set for inter-parte hearing so that he is given an opportunity to defend himself.
8. The Interested Parties in the Replying Affidavit sworn by their Advocate Namada Simoni, contested this Application on grounds that it was an abuse of the Court process because the Applicant was lying on oath. This is because from record, the Applicant was represented by the firm of M/S Omwoyo, Momanyi & Gichuki Advocates where one Mr. Sam Nyaberi worked. Upon service of the application for contempt, the Applicant filed a Replying Affidavit citing his inability to abide by the Court orders. On 15th March 2023 when the application was set down for hearing, Mr. Nyaberi was present and he submitted on behalf of the Applicant before the Ruling dated 13th July 2023 was rendered. In ELC JR E009 of 2023, sentencing of the contemnor was deferred to give way to negotiations. He urged that, this application should be dismissed with costs for being marred with lies and for being and abuse to the Court process.
9. This application was canvassed by way of written submissions.

The Applicant's Submissions

10. Counsel highlighted the following as the issues for determination:
11. On whether the Interested Parties effected service upon 2nd Ex-parte Applicant/ Applicant, it was submitted that contempt proceedings being of quasi criminal in nature, every stage of the process should be thoroughly followed as held by the Court of Appeal in *Woburn Estate Limited v Margaret Bashforth* [2016] eKLR. Additionally importance of personal service of both the order and the application for contempt was emphasized in *Tom Ojienda & Associates v County Secretary, Nairobi City County & another* [2022] KEHC 10705 (KLR) and *Nyamodi Ochieng Nyamogo & Another v Kenya Posts & Telecommunications Corporation* [1994] eKLR which held: "... "Keeping the importance of personal service of the order in mind we now take a look at the aforesaid two copies of the order both of which bear the stamp of Wetangula & Co Advocates, in acknowledgement of receipt of the said orders. Service on Wetangula & Co does not constitute personal service on any of the three officers. It is a personal service on each one of them that is required to be effected by law. Service of the two orders on Wetangula & Co, Advocates, on 25th October, 1993, and 1st November, 1993, therefore, is a wasted effort..."
12. Counsel submitted that the Applicant was not duly served as required highlighting that:



- i. There was no evidence of service of the application in the affidavit of service sworn on 28th October 2022 by Gloria Dzuya purportedly serving a hearing notice dated 16th May 2022 and an unknown notice of motion application for hearing on 3rd November 2022. The deponent purports to have called the Applicant to pick the hearing notice at the court. The deponent further misleads Court claiming that the Applicant signed on her copy. The signature on the hearing notice dated 16th May 2022 does not belong to the Applicant and the Applicant has never met Gloria Dzuya. It was also highlighted that the hearing notice has a stamp of I. Nyaribo Advocates having received at 11.44 am, while it is public information that the said advocates have their offices in Nairobi. Interestingly, by 12.00pm the said process server was already at Kajiado Law Courts. Additionally, the said hearing notice has a court stamp of 19th May 2022 but it is purported to have been served on 24th October 2022.
 - j. Counsel also submitted that the email extract dated 5th March 2023 sent at 8:50 am annexed by Mr. Namada did not contain any attachments and the owner of the email address was unknown to them because the address does not belong to the Applicant.
 - k. Counsel also contested the WhatsApp service by one Owuor O. Reen stating that the hearing notice dated 23rd February 2023 for the hearing slated on 15th March 2023 was purportedly served to the Applicant on 13th March 2023 at 1707 hours. This service was improper contrary to Order 51 rule 13(3) Civil Procedure Rule which provide that an application shall be served on the Respondent together with list of authorities not less than 7 clear days before the date of hearing. To support this reference was made to Zephania Ingosi & 13 others v Sasaka Henry Makokha being sued for and on behalf of Estate of Erasmus Sasaka Wachilonga [2018] eKLR.
 - l. Counsel also submitted that the Applicant denounced the signature appearing on his alleged Replying Affidavit, adding that in ELC JR No. E005 of 2023, the said advocate Nyaberi on cross-examination acknowledged that he appeared for the 3rd Interested Party (in that suit) without his instructions.
13. Therefore, the Interested Parties failed to duly and effectively effect service upon the Applicant and obtained court orders un-procedurally without according him an opportunity to defend himself. As such, this application should be allowed as prayed.

The Interested Parties submissions

14. Counsel for the Interested Parties affirmed contents of his Replying Affidavit and asked for this application to be dismissed with costs and the contemnor be sentenced.

Analysis and determination

15. I have considered the Notice of Motion, the affidavit in support and the response thereto, the rival submissions, and the authorities cited and find that the issues for determination are:
- i. Whether the Court should vacate, vary or set aside its Ruling dated 13th July 2023 which found the Applicant in contempt of the orders issued on 16th November 2016.
 - ii. Who should bear the costs of this application?
16. The 2nd Ex Parte Applicant, Ntuiyoto Maraswa, seeks to set aside this Court's Ruling dated 13th July 2023 wherein he was found to be in contempt of court for allegedly failing to comply with the orders issued on 16th November 2016. His application is anchored on allegations of procedural injustice that he was not duly served with the application for contempt and was thus condemned unheard. Further



that the Replying Affidavit dated 8th March 2023 in response to the contempt application was sworn by someone unknown to him because the signature on the Affidavit was not his.

17. It is not in contention that contempt of court proceedings are quasi-criminal in nature as stated by the Supreme Court of Kenya in *Githiga & 5 others v Kiru Tea Factory Company Ltd* [2023] KESC 41 (KLR) thus;

“ 50. Due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flowed from contempt proceedings, courts were required to adhere to the principles of natural justice, procedural fairness, and the right to a fair hearing. That was because, in contempt proceedings, the liberty of the subject was usually at stake, therefore, if a party alleged breaches of his fundamental rights and freedoms as envisaged under *the Constitution* albeit, at the Court of Appeal, the Supreme Court could not afford to shut its eye to such serious legal issues that called for settling as the apex Court...”

18. Therefore, the Applicant having claimed that his right to fair hearing was contravened due to lack of service, then it is up to Court to determine whether indeed the Applicant was duly served or not. The Supreme Court in the above case of *Githiga & 5 others* went on to hold:

“ 58. In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable and be such as that a full opportunity was given to an alleged contemnor to defend himself or herself. That was because contempt proceedings being quasi-criminal, required a higher standard of proof than in normal civil cases, and one could only be committed to civil jail or penalized on the basis of evidence that left no doubt as to the contemnor’s culpability...”

19. In ascertaining whether the Applicant properly served, this Court as perused the court file and the following is the history pertaining the application for Contempt.

20. In the Notice of Motion dated 19th December 2016, the Applicant herein, Ntuyoto Maraswa, participated and stated that he did not have the documents, hence it was impossible for him to comply with the orders issued on 8th December 2016. He also stated that the Decree was not directed to him.

21. Throughout these proceedings the Applicant, admitted that he was the Secretary of the Mailua Group Ranch. He was therefore the custodian of all the documents relating to the Group Ranch.

22. The Ruling of this Court dated 13th June 2023 directed the Applicant to show cause why he should not be cited for contempt for failing to comply with the Orders of 8th December 2016.

23. Instead of appearing before court to show cause, the Applicant decided to file the instant Notice of Motion.

24. The Applicant duly participated in the Notice of Motion dated 19th December 2016. He was represented by Mr. Nyaberi who submitted on his behalf of 15th March 2023 culminating in the Ruling of 13th June 2023.

25. I find that this Notice of Motion is abuse of the court process. All the Applicant has stated in his support of Affidavit is full of falsehoods.

26. I find no merit in this Application and the same is dismissed with costs to the Interested Parties.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 12TH DAY OF JUNE 2025.

L. KOMINGOI

JUDGE.

In The Presence Of:

N/A for the Ex Parte Applicants.

N/A for the Respondents.

Mr. Anyangu for Mr. Namada for the Interested Parties.

Court Assistant – Mutisya.

