



REPUBLIC OF KENYA



**Karebe Gold Mining Limited & another v Korir & 14 others (Environment and Land Case E009 of 2022) [2025] KEELC 6457 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6457 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAPSABET**  
**ENVIRONMENT AND LAND CASE E009 OF 2022**  
**GMA ONGONDO, J**  
**SEPTEMBER 29, 2025**

**BETWEEN**

**KAREBE GOLD MINING LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**PIUS KIPTANUI KOGO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CHESERET ARAP KORIR ..... 1<sup>ST</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF PETROLEUM & MINING ..... 2<sup>ND</sup> RESPONDENT**

**RICHARD ALAMBO ..... 3<sup>RD</sup> RESPONDENT**

**BILLY ALAMBO ..... 4<sup>TH</sup> RESPONDENT**

**PATRICK ALAMBO ..... 5<sup>TH</sup> RESPONDENT**

**SHADRACK KIPKOECH MELILEI ..... 6<sup>TH</sup> RESPONDENT**

**ZAKAYO KIMELI ..... 7<sup>TH</sup> RESPONDENT**

**HILLARY KOECH ..... 8<sup>TH</sup> RESPONDENT**

**ALFRED MAGUT ..... 9<sup>TH</sup> RESPONDENT**

**CLEOPHUS KIPROTICH ..... 10<sup>TH</sup> RESPONDENT**

**EZEKIEL KIPKOGEI KOECH ..... 11<sup>TH</sup> RESPONDENT**

**JACKTONE KIPROP ..... 12<sup>TH</sup> RESPONDENT**

**SHILLAH CHERUTO RONO ..... 13<sup>TH</sup> RESPONDENT**

**ELISHA KIPSANG MELI ..... 14<sup>TH</sup> RESPONDENT**

**FREDRICK KIBET NGETICH ..... 15<sup>TH</sup> RESPONDENT**



## RULING

1. This ruling pertains to the application by way of a Notice of Motion dated 1<sup>st</sup> April 2025 originated under, inter alia, section 5 (1) of the *Judicature Act* Chapter 8 of the Laws of Kenya by the 1<sup>st</sup> plaintiff/ applicant through Orende and Associates Advocates for the orders infra;
  - a. Moot
  - b. Moot
  - c. That the following named persons;
    - i. Richard Alambo
    - ii. Billy Alambo
    - iii. Patrick Alambo
    - iv. Shadrach Kipkoech Melilei
    - v. Zakayo Kimeli
    - vi. Hillary Koech
    - vii. Alfred Magut
    - viii. Cleophus Kiprotich
    - ix. Ezekiel Kipkoge Koech
    - x. Jackton Kiprop
    - xi. Shillah Cheruto Rono
    - xii. Elisha Kipsang Meli
    - xiii. Fredrick Kibet Ngetich
    - xiv. Jacktone Bett Kipkemboi
    - xv. David Kipnyango
    - xvi. Silas Limo
    - xvii. Isaiah Kiplagat
    - xviii. Meshack Kipngetich Kemboi
    - xix. Ochieng Odera
    - xx. Atieno Odera

Be summoned before this Honourable Court to be committed to civil jail for blatantly failing to comply with orders given by this Honourable Court on 18<sup>th</sup> October, 2022 and the summons be effected through OCPD Songhor Police Station.



- d. That this Honourable Court be pleased to order the respondents/Contemnors to forthwith demolish and remove the cyanide leaching tanks constructed for the purpose of extracting gold located on land parcel Nandi/chemase 974.
  - e. That the National Environment Management Authority (NEMA) together with the OCPD Songhor Police Station do execute prayer 4 herein.
  - f. That on failing to show necessary cause, the said Respondents /Contemnors be committed to prison for a maximum period of 6 months for being in contempt of this Honourable Court orders given on 18<sup>th</sup> October, 2022.
  - g. That the costs of this application be provide for.
2. The application is anchored upon the 26-paragraphed supporting affidavit sworn on even date by Jeremy Froome the Director of the plaintiff/applicant and annexed documents including a copy of the court order issued on 18<sup>th</sup> October 2022 (JF-1) and photographs showing a chronology of events (JF-4) that the application be allowed in order not to bring the dignity and authority of the court into dispute. Also, the application is premised on the grounds which include;
- a. That on 18<sup>th</sup> October 2022, the Honourable court delivered a ruling wherein it directed that there shall be no mining activities on the parcel of land LR Nandi/chemase/974 by all the parties.
  - b. That notably the 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> Respondents/Contemnors have previously been cited for contempt of Court of the orders issues on 18<sup>th</sup> October, 2022 and this Honourable Court held them to be in contempt vide its ruling which was delivered on 9<sup>th</sup> March, 2023.
  - c) That despite this Honourable having prohibited all the parties from engaging in any mining activities on LR. Nandi/chemase/974, the applicant's employees have spotted and positively identified the following persons engaging in mining activities during the period of October 2024 to March, 2025, by way of carrying out cyanide leaching operations for extraction of gold on the suit property; -
    - a. Richard Alambo
    - b. Billy Alambo
    - c. Patrick Alambo
    - d. Shadrack Kipkoech Melilei
    - e. Zakayo Kimeli
    - f. Hillary Koech
    - g. Alfred Magut
    - h. Cleophus Kiprotich
    - i. Ezekiel Kipkogei Koech
    - j. Jackton Kiprop
    - k. Shillah Cheruto Rono
    - l. Elisha Kipsang Meli



- m. Fredrick Kibet Ngetich
3. The 1st defendant/respondent through J. M Kimani and Company Advocates, opposed the application by grounds of opposition dated 14<sup>th</sup> April 2025 thus;
    - a. That the application is fatally and incurably defective and a waste of precious judicial time.
    - b. That the application is moot in far as it stems from a none existent order incapable of being varied or qualified.
    - c. That the application is calculated move to frustrate conclusion of the matter.
    - d. That the application is frivolous, misconceived, vexatious and amounts to an abuse of the court process and should be dismissed with costs.
  4. Moreover, the 1st defendant /respondent opposed the application in his replying affidavit of nine paragraphs sworn on 28<sup>th</sup> July 2025 and prayed that the application be dismissed with costs. He averred in part that the application is anchored on none existent orders thus, moot and a waste of precious judicial time. That the orders were pegged on the ruling of the Court of Appeal at Nairobi on the application dated 28<sup>th</sup> July 2020 in Civil Appeal No. 177 of 2020; Equatorial Land Holdings Limited-vs-Cheseret Arap Korir rendered on 2<sup>nd</sup> December 2022 wherein the said application was dismissed (CAK 1-The Court of Appeal ruling herein). That since the order was self-effectuating, it lapsed automatically by the Court of Appeal's pronouncement on the application. That therefore, there were no orders in force capable of being violated as alleged in the application.
  5. By a 26-paragraphed further affidavit sworn on 22<sup>nd</sup> September 2025, Jeremy Froome the director of the applicant/plaintiff averred in part that the 1<sup>st</sup> respondent along with the named persons in the application, deliberately and blatantly violated the said orders by continuing with mining activities. That the Court of Appeal Application No. 177 of 2020 which is distinct from this one, arose out of an application dated 26<sup>th</sup> July 2020 relating to mining licence on the suit land but the same was dismissed by the ruling which did not lapse the orders of 18<sup>th</sup> October 2022.
  6. The 2<sup>nd</sup> plaintiff and the 2<sup>nd</sup> defendant through learned counsel Mr Kenei is not opposed to the application.
  7. Also, 2<sup>nd</sup> defendant represented by Ms Cheruyot instructed by the Honourable Attorney General, is not in opposition to the application.
  8. The application was heard by way of written submissions further to the court's orders given on 1<sup>st</sup> April 2025 in consonant with Order 51 Rule 16 of the Civil Procedure Rules 2010.
  9. By the submissions dated 24<sup>th</sup> July 2025, learned counsel for the applicant stated, inter alia, that the named persons (i to xx) in the application are closely associated with the 1<sup>st</sup> respondent either as family members, employees, relatives or proxies have been involved in a deliberate and organised effort to continue mining activities in fragrant violation of the court orders of 18<sup>th</sup> October 2022. Reliance was made on Black's Law Dictionary 9<sup>th</sup> Edition regarding the definition of 'Contempt' and the Maisha Nishike Ltd-vs-Commissioner of Lands & 3 others (2011) eKLR and Wildlife Lodges Ltd -vs- County Council of Narok and another (2005) 2 EA 344 to fortify the submissions.
  10. In the submissions dated 12<sup>th</sup> August 2025, learned counsel for 1<sup>st</sup> defendant/respondents contends in part that the application is moot as it stems from a non-existent order which was pegged on outcome of the ruling in Nairobi Court of Appeal (Application) No. 177 of 2020. That therefore, there was



no order in force capable of being violated as alleged in the application. That thus, the application be dismissed with costs and the matter be fixed for hearing on priority basis.

11. The applicant's supplementary submissions dated 22<sup>nd</sup> September are further to the submissions dated 27<sup>th</sup> July 2025, in response to the 1<sup>st</sup> defendant/respondent's submissions and provided the chronology of events of the instant case including the orders of 18<sup>th</sup> October 2022 and notice of appeal lodged by the 1<sup>st</sup> defendant. It was submitted that the 1<sup>st</sup> defendant has been in contempt of court repeatedly and cited, inter alia, Econet Wireless Kenya Ltd-vs-Minister for Information and Communication of Kenya (2005) KLR 828, Khisa-vs-Kundu (2023) KEELC 492 (KLR), Shimmers Plaza Ltd-vs-National Bank of Kenya Ltd (2015) KECA 945 (KLR).
12. I have anxiously considered the entire application, the grounds of opposition, the replying affidavit, the parties' respective submissions as well as the entire record herein. So, have the applicants established that the orders sought in the application are meritorious?
13. On 18<sup>th</sup> October 2022, this court (Mwanyale J) issued maintenance of status quo orders on the terms thus;

‘The orders issued on 28<sup>th</sup> March 2022 are hereby varied to the extent that the orders of status quo be and is hereby issued in terms that there shall be no mining on Nandi/chemase/874 by all parties noting that the 1<sup>st</sup> defendant has not started mining yet. The plaintiff shall not mine on Nandi/chemase/974 and Nandi/legemet/224 but shall await the outcome of the Appeal on the pending application so as to be permitted to access the mining shaft located in Nandi/chemase/974.’ (Emphasis added)
14. The orders of 28<sup>th</sup> March 2022 were in respect of an application dated 25<sup>th</sup> March 2022 which the court fixed for inter partes hearing on 12<sup>th</sup> April 2022 when it was adjourned to 3<sup>rd</sup> May 2022 for mention as leave was granted to the applicant to file a further affidavit.
15. The application referred to in the orders of 18<sup>th</sup> October 2022 was the Notice of Motion dated 28<sup>th</sup> July 2020 that sought principally, to restrain the 1<sup>st</sup> defendant/respondent from, inter alia, dealing with the suit properties LR Nos. Nandi/chemase/974 and Nandi/legemet/224 pending the hearing and determination of the application as well as the appeal. By the Court of Appeal ruling, the application was dismissed with costs to the respondent.
16. Notably, paragraphs 23 and 24 of the Court of Appeal ruling read;
  23. ‘.....it is on record that the applicant has since vacated the suit property and demolished any structures thereon save the dam and the respondent has undertaken that together with other stake holders, NEMA included, to oversee the decommissioning of the mine to its logical conclusion, so the applicant need not be on the suit property.
  24. From the foregoing the applicant has not shown that indeed it has an arguable appeal, or how its appeal would be rendered nugatory.....?’
17. Clearly, there is Nairobi Court of Appeal Civil Appeal No. 177 of 2020 on the same subject matter herein. The appeal is pending hearing and determination.
18. It is trite law that it would not be right for the same subject matter be heard simultaneously by the Court of Appeal and this court; see Judicial Commission of Inquiry into Goldenberg Affair & another-Job Kilach (2003) KECA 47 (KLR).



19. The principle of ‘Sub Judice’ is anchored on section 6 of the *Civil Procedure Act* Chapter 21 Laws of Kenya. The court may exercise its special jurisdiction and inherent powers under sections 3 and 3A of the same Act to prevent abuse of process including the application of the said principle and for the ends of justice; see also Legal Advice Centre aka Kituo Cha Sheria-vs- Communication Authority of Kenya (2013) eKLR.
20. In Blacks’ Law Dictionary 10<sup>th</sup> Definition, the term ‘Sub judice’ means;  

‘Before the court or judge for determination.’
21. The purpose of sub judice is to prevent litigation from being unnecessarily duplicated, vexatious or potentially leading to conflicting determinations. This court is typically barred from entertaining the instant matter until the pending appeal at the Court of Appeal on the same subject matter is resolved. So, I find it necessary to stay the proceedings herein to prevent possible conflicting decisions on the same subject matter from the two courts as I subscribe to the decisions of the Court of Appeal.
22. In Re the Matter of Interim Independent Electoral and Boundaries Commission Application 2 of 2011 (2011) eKLR the Supreme Court of the Republic of Kenya cited with the approval the Australian decision in Re Judiciary Act 1903-1920 & in Re Navigation Act 1912-1920 (1921) 29 CLR 257 it was held;  

‘.....We do not think that the term ‘matter’ means a legal proceeding, but rather the subject matter for determination in a legal proceeding.....’
23. The respondent opposed the application on the grounds, inter alia, that the same amounts to an abuse of the court process. In the case of David Ndi & others-vs-AG & others (2013) eKLR, where it was held;  

‘the rationale behind this provision is that it is vexatious and oppressive for a claimant to sue concurrently in two courts. Where there are two courts faced with substantially the same question or issue, that question or issue should be determined in one of those courts and the court will, if necessary stay one of the claims.’
24. It is therefore, the finding of this court that subject matter herein is also the subject matter before the Court of Appeal. To prevent abuse of the court process and in the ends of justice, this suit shall be stayed pending the outcome of the appeal at the Court of Appeal.
25. A fortiori, the instant suit originated by way of a plaint dated 28<sup>th</sup> March 2022, be and is hereby stayed in entirety under section 6 of the *Civil Procedure Act* Chapter 21 Laws of Kenya.
26. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 29<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**HON. G M A ONGONDO**

**JUDGE**

In the presence of; -

Mr Lumumba instructed by Orende learned counsel for the 1<sup>st</sup> Plaintiff/Applicant

Mr K. Kinyanjui learned counsel for the 1<sup>st</sup> Defendant/Respondent

Walter, Court Assistant

