



**M'Ithili v Nkubitu & another (Environment and Land Case
E025 of 2025) [2025] KEELC 6298 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6298 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE E025 OF 2025**

**JO MBOYA, J
SEPTEMBER 25, 2025**

BETWEEN

GEOFFREY KAUC M'THILI PLAINTIFF

AND

PETER THURANIRA NKUBITU 1ST DEFENDANT

JOHANA KIRIAMBURI 2ND DEFENDANT

RULING

1. What is before me is the Notice of Motion Application dated 20th August 2025 brought pursuant to the provisions of Order 42 (6), and Order 51 (1) of the Civil Procedure Rule, Sections 1A, 1 B, 3A & 63E of the Civil Procedure Act, Chapter 21, Laws of Kenya; and wherein the applicant has sought the following reliefs:
 - i. That this application be certified as urgent and service thereof be dispensed within the first instance.
 - ii. That the application be heard during this vacation.
 - iii. That pending the hearing and determination of the suit herein, to be filed, the honorable court be pleased to issue an order of stay, staying any proceedings before the Tigania principal magistrates' court in ELC suit No. E003 of 2025; Peter Thuranira Nkubitu vs Geoffrey Kauo M'Ithili that is scheduled to come up for hearing on 11th September 2025.
 - iv. That this Honourable court be pleased pending the hearing and determination of this application and matter herein, to issue an order of temporary injunction restraining the respondents, themselves assigns or representatives, employees or agents or any such person(s) acting under their command and/or instruction from any way whatsoever interfering with



applicant's peaceful enjoyment and use of his property suit land all that parcel of land known as land parcel No. Nyambene/Kitheo/2893.

- v. Costs of the Application be in the cause.
2. The instant application is premised on various grounds which have been highlighted in the body thereof. In particular, it has been contended that the applicant herein and the 2nd defendant entered into an exchange agreement pertaining to and concerning the suit property. Nevertheless, it has been posited that the 2nd defendant did not transfer the suit property to the applicant. Furthermore, it has been averred that though the suit property remained registered in the name of the 2nd defendant/respondent, same was held on trust for the applicant.
3. In addition, the applicant has also contended that despite the fact that the suit property was held on trust by the 2nd defendant/respondent, the said 2nd defendant/respondent has since sold and transferred the suit property to the 1st defendant/respondent. Moreover, it was posited that arising from the sale, the 1st defendant/respondent has since filed civil proceedings, namely; Tigania CMCC ELC No. E003 of 2025 and wherein the 1st defendant/respondent seeks various orders, including eviction of the applicant.
4. The instant application is supported by the affidavit of the applicant, sworn on even date and to which the applicant has annexed various documents, including copies of photographs showing occupation/possession of the suit property. In addition, the applicant has also annexed copies of objection proceedings relative to the suit property.
5. The defendants/respondents filed a replying affidavit sworn on the 9th September 2025; and wherein the deponent [Peter Thurania Nkubitu] has annexed various documents. Some of the documents annexed to the replying affidavit include a copy of the sale agreement entered into between the defendants, a copy of the certificate of title and a copy of the demarcation register showing ownership of the suit property during the adjudication proceedings.
6. The instant application came up for hearing on 23rd September 2025; and whereupon the advocate for the parties agreed to canvass and dispose of the application by way of oral submissions. Suffice it to state that the submissions by and on behalf of the respective parties are on record.
7. Briefly, learned counsel for the applicant adopted and reiterated the grounds at the foot of the application; reiterated the averments in the body of the supporting affidavit and thereafter highlighted three [3] key issues. Firstly, learned counsel for the applicant has submitted that the 1st defendant respondent has since filed/commenced civil proceedings before the Tigania law courts, namely; Tigania SPM ELC No. E003 of 2025 and wherein the 1st respondent is seeking inter alia orders to evict the applicant from the suit property. Moreover, learned counsel submitted that same is keen to mount and has indeed, mounted a claim based on trust, but that such a claim cannot be raised and or canvassed before the subordinate court.
8. To this end, learned counsel for the applicant has submitted that same was enjoined to and indeed filed the instant suit.
9. Further and in addition, learned counsel for the applicant has submitted that the filing of the instant suit is premised on the basis that the lower court is not seized of the jurisdiction to entertain claims based on trust. In this regard, learned counsel has cited and referenced the provisions of Section 9 of the Magistrates Courts Act, 2015.



10. Secondly, learned counsel for the applicant has submitted that there is need to grant the relief[s] sought so as to avert the likelihood of conflicting decisions being issued/generated by the two courts, namely; Tigania SPM and this court. In this regard, learned counsel has invited the court to find and hold that proper basis has been laid to warrant the grant of orders of stay of proceedings pending the hearing and determination of the instant matter.
11. Thirdly, learned counsel for the applicant has submitted that the applicant has been in occupation and possession of the suit property and that a failure to issue the orders of temporary injunction will culminate into serious harm, injury and or damages. Simply put, learned counsel for the applicant has contended that the applicant shall be disposed to suffer irreparable loss.
12. Flowing from the foregoing, learned counsel for the applicant has therefore implored the court to find and hold that the application before hand is meritorious. In this regard, the court has been invited to grant the reliefs sought and award costs to the applicant.
13. Learned counsel for the respondents adopted and relied on the replying affidavit sworn by the respondents and thereafter highlighted two [2] key issues. Firstly, learned counsel for the respondents has submitted that the lower court[s] [subordinate court] are seized of the requisite jurisdiction to entertain and adjudicate upon claim based on trust. To this end, counsel submitted that the subordinate court can hear and adjudicate upon claims of trust subject to their respective pecuniary/monetary jurisdiction. In particular, learned counsel cited and referenced the provisions of section 26 of the *Environment and Land Court Act* 2011.
14. Additionally, learned counsel for the respondent has submitted that the issues that have been raised by the applicant at the foot of the instant case are issues that ought to have been filed vide a counterclaim in the subordinate court. To this end, it has been submitted that the filing of the instant suit constitutes and amounts to an abuse of the due process of the court.
15. It was the further submission by learned counsel for the respondent that the applicant herein has neither established nor demonstrated reasonable basis for the grant of the orders sought. Moreover, it has been submitted that the applicant herein has no stake in respect of the suit property.
16. Arising from the foregoing, learned counsel for the respondent has submitted that the application beforehand is premature, misconceived and an abuse of the due process of the court. In this regard, the court has been invited to strike out both the application and the suit.
17. Having reviewed the notice of motion application, the replying affidavit and upon taking into account the submissions on behalf of the respective parties, I come to the conclusion that the determination of the instant matter turns on three [3] key issues, namely; whether the subordinate courts have the requisite jurisdiction to entertain claims based on trust or otherwise, whether the applicant herein has established a basis for the grant of the orders of stay of proceedings or otherwise; and whether the application and the suit on behalf of the applicant constitutes an abuse on the due process of the court.
18. Regarding the first issue, namely; whether the subordinate court are seized of jurisdiction to entertain and adjudicate upon claims based on trust, it is important to recall and reiterate that claims based on trust touch on and or concern ownership of title to and or rights over land. To this end, the provisions of section 26 of the Environment and Land Court clothe the Magistrate's Court with the requisite jurisdiction to entertain and adjudicate upon all claims touching on ownership of, title to and use of land.
19. Suffice it to state that the only exception [limitation] to the jurisdiction of the magistrate's court relates to matters touching on adverse possession, which by dint of the provisions of section 38 of



the Limitations of Actions Act vest in the High Court [a terminology which is to be read mutatis mutandis] in line with the provisions of section 7 of the 6th Schedule of the *Constitution*.

20. Moreover, the fact that the subordinate court[s] do not have jurisdiction over adverse possession has since been settled by the Honorable Court of Appeal. In the case of *Sugawara v Kiruti* (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso, alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity) & 3 others (Civil Appeal E141 of 2022) [2024] KECA 1417 (KLR) (11 October 2024) (Judgment) the court of appeal expounded on the jurisdiction pertaining to adverse possession and stated thus;

In the circumstances, in view of the express provisions of section 38 of the *Limitation of Actions Act*, as did the Environment and Land Court, we find that Magistrates' Courts do not have jurisdiction to determine the claims of adverse possession. As a consequence, the trial magistrate in the instant case rightly disregarded hearing and determining it. In the result, this ground is without merit and is accordingly dismissed.

21. Back to the issue of the jurisdiction of the subordinate court to entertain claims based on trust. I have pointed out that by dint of the provisions of section 26 of the *Environment and Land Court Act*, the subordinate court have the requisite jurisdiction to deal with and adjudicate upon claims based on trust. For good measure, the only limitation relates to the pecuniary/monetary jurisdiction of the designated subordinate courts. [see the provisions of section 7 of the Magistrates Court Act that highlights the pecuniary jurisdiction of various cadres of Magistrates.
22. In view of the foregoing, I do not agree with the submissions by learned counsel for the applicant. To this end, the applicant herein [who is a defendant in the Tigania file] was at liberty to file/mount a counterclaim impleading the issues of trust; cancellation of the Title; or otherwise. Furthermore, the applicant herein was also at liberty to join the 2nd defendant [if at all] in line with the provisions of Order 7 Rule 3 of the Civil Procedure Rules 2010.
23. Before concluding on this issue, it is important to underscore that the Supreme Court decision in the case of *Isaac Kiebia M'Inanga vs Isaya Theuri M'Lintari* (2018) eKLR, which was referenced by learned counsel for the applicant, did not address the jurisdiction of the subordinate court[s] to handle or adjudicate upon claims of trust. On the contrary, the decision of the Supreme Court affirmed the position that customary trust is an overriding interest.
24. Turning to the second issue, it is imperative to underscore that where proceedings are filed before a court of competent jurisdiction, the concerned courts [in this case, the Tigania Senior principal magistrates court] is enjoined to entertain and adjudicate upon the proceedings expeditiously and without undue delay. [See the provisions of article 159 (2) (b) of the *Constitution*]. [See also Sections 1A & 1B of the *Civil Procedure Act*.
25. On the need to have proceedings before the court heard and disposed off expeditiously, it is also important to take cognizance of the holding of the Court of Appeal in the case of *Said Sweilem Gheithan Saanum v Commissioner Of Lands (being sued through Attorney General) & 5 others* [2015] eKLR - Civil Appeal 16 of 2015 where the Court of Appeal stated as hereunder;

"Justice shall not be delayed" is no longer a mere legal maxim in Kenya but a constitutional principle that emphasizes the duty of the advocates, litigants and other court users to assist the court to ensure the timely and efficient disposal of cases. The principles which are reiterated by sections 1A and 1B of the *Civil Procedure Act* are intended to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The principle cannot therefore be a panacea which heals every sore in litigation, neither is it a licence to parties



to ignore or contravene the law and rules of procedure. We agree, with respect, with the learned Judge's conclusion that the suit in the High Court was not properly handled by the appellant's advocate. The court cannot be invited to turn a blind eye in the face of such inordinate delay and in the absence of sufficient explanation. Likewise, it cannot be fashionable for parties to blame their advocate and disclaim that the mistakes made by their advocates, who they have themselves appointed cannot be visited upon them.

26. In respect of the instant matter, learned counsel for the applicant seeks to procure an order of stay of proceedings. The net effect of an order of stay of proceedings is to suspend and or hold the proceedings in abeyance. Such an order has a direct impact on the timelines for the hearing and determination of a suit/proceedings.
27. Given the nature and legal implications of an order of stay of proceedings, such an order ought and should be issued sparingly, cautiously and only where there exist[s] exceptional circumstances. Simply put, an order of stay of proceedings should never be the general norm, but the exception.
28. Moreover, before a court of law can venture forward and grant such an order, the claimant is enjoined to place before the court a credible basis and or explanation to warrant such an order. In addition, the claimant must also substantiate the prejudice [if any] that same is disposed to suffer unless the orders of stay of proceedings are granted.
29. The legal position underpinning the grant of an order of stay of proceedings was expounded in the case of *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000* [Unreported] where the Court [Justice Ringera, J-as he then was] stated thus;

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously” (emphasis added)

30. The position [supra] is reiterated in *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, where the learned authors stated as hereunder:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might



not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

31. Has the applicant herein placed before the court any exceptional circumstances to warrant the grant of the order's stay of proceedings? I am afraid that the applicant has failed to do so. Moreover, it is not lost on me that the issues that the applicant is raising vide the instant suit can very well be raised, canvassed and be ventilated before the subordinate court vide a counterclaim.
32. In this regard, the applicant shall not be disposed to suffer any prejudice. On the contrary, the applicant shall afford himself the latitude provided for in terms of Article 48 of the Constitution 2010, including an expanded right of appeal; in the event of dissatisfaction with the decision of the Subordinate Court.
33. Before departing from this issue, I wish to point out that the grant of the orders of stay of proceedings is likely to throw the proceedings in the subordinate court in abeyance. In this regard, the rights of the 1st respondent to be heard in his own case [the suit in the subordinate court] shall be impacted. In this respect, I am afraid that the orders of stay of proceedings sought are not tenable.
34. Turning to the third issue, namely; whether the filing of the instant suit and the attendant application constitute an abuse of the due process of the court. Suffice it to underscore that the concept of abuse of the due process of the court is infinite. Same is incapable of exhaustive definition.
35. Nevertheless, the concept espouses various facets. The bottom line is that any action that is intended to misuse the process of the law for ulterior motives or for collateral purposes is deemed to constitute an abuse of the due process of the court.
36. Furthermore, the concept of the due process of the court also looks at the bona-fides [good faith] in the suit/proceedings. In addition, the concept also enjoins the court to take cognizance of the circumstances surrounding a particular matter and or case; and to interrogate the conduct of the parties.
37. The concept of abuse of the due process of court was highlighted in the case of Satya Bhama Gandhi v Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR) where justice Mativo, Judge [as he then was] stated as hereunder;

“28. Multiplicity of actions on the same matter between the same parties, even where there exists a right to bring the action is regarded as an abuse. [18] The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right per se. The abuse consists in the intention, purpose and aim of person exercising the right to harass, irritate, and annoy the adversary and interface with the administration of justice. [19] I find no difficulty in concluding that this Judicial Review Application is based on similar grounds as the Petition referred to above.” [see also the holding in the case of Rutongot Farm Ltd vs Kenya Forest Service (2018) KESC].

38. Most recently, the Court of Appeal addressed the concept in the case of Cove Investments Limited v Rono & 2 others (Civil Appeal (Application) E051 of 2025) [2025] KECA 1089 (KLR) (20 June 2025) (Ruling) where the court stated thus;

The court has the power to take action against parties who abuse its process. (See the High Court decision in Satya Bhama Gandhi vs. Director of Public Prosecutions & 3 Others [2018] KEHC 6100 (KLR)). This can include dismissing claims, ordering costs, or even disciplining the litigants. In essence, in doing so, the court is protecting the integrity of its



own process and ensuring that justice is served fairly, even when parties try to manipulate the system. Lord Diplock in *Hunter vs. Chief Constable of the West Midlands Police* [1982] AC 529 at p. 536C described such conduct and asserted “the inherent power which any court must possess to prevent misuse of its procedure in a way which, whilst not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to the litigation before it or would bring the administration of justice into disrepute amongst right-thinking people.

39. Bearing in mind the [dicta] espoused in the decision supra, it is now appropriate to return back to the circumstances surrounding the instant matter and the attendant application. To start with, the applicant herein is a party to the suit in the subordinate court. Furthermore, the dispute in the subordinate court touches on and concerns the same suit property. In addition, the issues raised thereunder bear semblance to the ones before this court.
40. On the other hand, it is not lost on this court that the issues being raised and canvassed by the applicant herein are issues that can be canvassed vide a counterclaim before the subordinate court. Moreover, there is no gainsaying that a counterclaim is a cross suit and hence the applicant herein would be at liberty to implead any additional party, including the 2nd defendant. [See the decision of the Court of appeal in the case of *County Government of Kilifi v Mombasa Cement Limited* [2017] KECA 633 (KLR).
41. Additionally, learned counsel for the applicant was/is knowledgeable of the fact that the court process was supposed to be used in such a manner as to ensure, just, efficient, proportionate and affordable utilization of judicial time. Further and in any event, it is common ground that both the applicant and his counsel are called upon to assist the court in realization of the overriding objects. [see section 1B of the *Civil Procedure Act*].
42. Despite the foregoing, the applicant has since filed the instant suit and the net effect of the suit is to create parallel proceedings over and in respect of the same dispute. No wonder learned counsel for the applicant is before this court seeking a stay of proceedings on the basis that there is a likelihood of conflicting decisions emanating from the two courts.
43. Surely this is a scenario that could have been averted by the applicant. For good measure, the scenario could have been averted by paying due regard to the provisions of Order 7 Rule 3 of the Civil Procedure Rules, 2010.
44. In my mind, the circumstances in respect of the instant matter constitute and amounts to an abuse of the due process. The filing of the suit was merely intended to achieve a collateral purpose. Furthermore, I am driven to imagine that the instant suit was being filed for purposes of forum shopping.
45. To this end, I find and hold that the entire suit and the attendant application are an abuse of the due process of the court. Moreover, the circumstances beforehand are such that this court is called upon to invoke and deploy the inherent; residual; intrinsic jurisdiction to avert misuse of the judicial resources. [See the holding of the Supreme Court in the case of *County Government of Narok vs Livingstone Kunini Ntutu* (2018) eKLR – paragraphs 99 – 101; where the court expounded on the scope of the inherent powers of the court].

Final Disposition.

46. Flowing from the discussion in the body of the ruling, it must have become apparent that the entire suit and the attendant application constitute and amounts to an abuse of the court process. In addition, it is also crystal clear that the contention by learned counsel for the applicant that the subordinate court



have no jurisdiction to entertain and adjudicate upon claims of trust was premised on misapprehension of the law.

47. In the upshot, the final orders that commend themselves to the court are as hereunder;
- i. The Application dated 20th August 2025, be and is hereby Dismissed.
 - ii. The suit vide Meru ELC E025 of 2025 be and is hereby struck out for being an abuse of due process of the court.
 - iii. Costs of the suit and the application be and are hereby awarded to the Defendants.
 - iv. The Costs in terms of clause [iii] shall be agreed upon; and in default same shall be taxed by the Deputy Registrar in the usual manner.
48. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 25TH DAY OF SEPTEMBER 2025

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein – Court Assistant

Miss D. Nyamu for the Plaintiff/applicant

Mr. J. Ondieki for the Defendants/Respondents

