



REPUBLIC OF KENYA



**Nduati & 2 others v Chemutai & 3 others (Environment and Land Case E080 of 2024) [2025] KEELC 6735 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6735 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E080 OF 2024**

**MAO ODENY, J  
OCTOBER 7, 2025**

**BETWEEN**

**BEDAN MWANGI NDUATI ..... 1<sup>ST</sup> PLAINTIFF  
MOSES KIPKURUI KOECH ..... 2<sup>ND</sup> PLAINTIFF  
SAMUEL GITHINJI MURAYA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**MERCY CHEMUTAI ..... 1<sup>ST</sup> DEFENDANT  
SAMMY KIMUTAI CHERUIYOT ..... 2<sup>ND</sup> DEFENDANT  
BEN KEMBOI KOMEN ..... 3<sup>RD</sup> DEFENDANT  
LAND REGISTRAR, NAKURU ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of a Notice of Motion dated 29<sup>th</sup> May, 2025, by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant/Applicants seeking the following orders:
  - a. Spent
  - b. Spent
  - c. That the orders of the court dated 19<sup>th</sup> May, 2025 and all consequential orders against the Defendant/Applicant be hereby set aside.
  - d. That this Honourable Court be pleased to restore the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants to their possession of the suit property, Nakuru Municipality Block 20/43, pending the hearing and determination of this suit.
  - e. That the costs of this application be provided for.



2. The application is supported by the annexed affidavit of Mercy Chemutai, the 1<sup>st</sup> Defendant/Applicant sworn on 29<sup>th</sup> May, 2025, who deponed that on 6<sup>th</sup> May, 2025, this court granted a temporary injunction barring the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant/Applicants from disposing of the suit property, Nakuru Municipality Block 20/43.
3. She further deponed that on 19<sup>th</sup> May, 2025, this Honourable Court varied the orders of 6<sup>th</sup> May, 2025, to proceed to evict the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from the suit property, which was done on 28<sup>th</sup> May, 2025 in the company of goons and supervision of the OCS Kaptembwa Police Station.
4. The 1<sup>st</sup> Defendant/Applicant deponed that the orders of 19<sup>th</sup> May, 2025, were issued ex-parte and did not in any way grant the Plaintiffs authority to evict the Defendants and take possession of the suit property pending the hearing and determination of the suit.
5. It was the 1<sup>st</sup> Defendant/Applicant's deposition that the Plaintiff/Respondents misled the court by claiming that they had been evicted by the Defendants upon issuance of the orders of 6<sup>th</sup> May, 2025, which led to the issuance of the orders facilitating the Defendant/Applicants' eviction on the 19<sup>th</sup> May, 2025.
6. Samuel Githinji Muraya, the 3<sup>rd</sup> Plaintiff/Respondent filed a Replying Affidavit sworn on 23<sup>rd</sup> June, 2025, and deponed that there were no new substantive orders prayed for and issued via the application dated 14<sup>th</sup> May, 2025, since the same is a review of the earlier orders issued to them vide the ruling and orders of 6<sup>th</sup> May, 2025. He deponed that the Defendant/Applicants suffered no prejudice by the orders being issued ex-parte.
7. It was the 3<sup>rd</sup> Respondent's deposition that an order of temporary injunction was already in place against the Defendant/Applicants and the current application is an attempt to illegally take possession and occupy the suit property.

#### **1<sup>st</sup>, 2<sup>nd</sup> And 3<sup>rd</sup> Defendant/applicants' Submissions**

8. Mr. Ochieng, counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, filed submissions dated 8<sup>th</sup> July, 2025, and submitted that the Plaintiffs' application for review which led to the orders of 19<sup>th</sup> May, 2025, did not satisfy the grounds for review under Order 45 Rule 1 of the Civil Procedure Rules. Counsel submitted that the Plaintiffs did not demonstrate the discovery of new evidence or an error apparent on the face of the record in the orders of 6<sup>th</sup> May, 2025.
9. It was counsel's submission that no sufficient reason was provided to warrant the variation of the orders to include police supervision by the OCS Kaptembwa Police Station, which facilitated the Defendants' eviction. Counsel relied on the case of *Muyodi v Industrial and Commercial Development Corporation & Another* [2006] 1 EA 243.
10. Mr. Ochieng, further submitted that the orders of 19<sup>th</sup> May, 2025 were issued ex-parte without notice to the Defendants or an opportunity for them to respond to the allegations raised by the Plaintiffs. Counsel relied on Article 50 (1) of *the Constitution* of Kenya, 2010 and the case of *Mbaki & Others v Macharia & Another* [2005] 2EA 206.
11. It was counsel's submission that the Defendant/Applicants' eviction from the suit property was premature and prejudiced their property rights as the issue of ownership remains undetermined. Counsel relied on the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and submitted that the Plaintiff/Respondents failed to meet the threshold for granting a temporary injunction.



12. Mr. Ochieng, further submitted that the orders of 19<sup>th</sup> May, 2025, having been obtained through misrepresentation and without due process are a nullity and must be set aside and relied on the case of Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1.

### **Plaintiff/respondents’ Submissions**

13. Ms. Rotich, counsel for the Plaintiff/Respondents, filed submissions dated 24<sup>th</sup> June, 2025, and identified the following issues for determination:
- a. Whether it was within the jurisdiction of this honourable court to review its orders of 6<sup>th</sup> May, 2025?
  - b. Whether the Defendants/Applicants were in possession of the suit property and should be reinstated to occupation?
  - c. Whether this honourable court should stay the execution of the orders dated 19<sup>th</sup> May, 2025?
14. On the first issue, Ms. Rotich submitted that this Honourable court has the power to review its orders as envisioned under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. Counsel submitted that the Plaintiff/Respondents relied on the said provisions in their application dated 14<sup>th</sup> May, 2025 which was allowed by the court in its orders dated 19<sup>th</sup> May, 2025. Counsel relied on the case of Obonyo & 2 others v Lisaye, Environment and Land Appeal No 18 of 2021.
15. On the second issue, counsel submitted that this Honourable court had issued orders of temporary injunction dated 6<sup>th</sup> May, 2025, against the Defendant/Applicants and their current application is seeking stay of execution and vacation of the orders of review dated 19<sup>th</sup> May, 2025 which only clarify the orders of 6<sup>th</sup> May, 2025.
16. Ms. Rotich further submitted that if the Defendant/Applicants were not satisfied with the said ruling, they ought to have appealed the same, and that this court cannot sit on an appeal of its own decision.
17. On the third issue, counsel submitted that the orders of 19<sup>th</sup> May, 2025, are not substantive and positive orders which can be stayed, hence the court cannot stay the said orders without affecting the substantive orders of temporary injunction issued on merit on 6<sup>th</sup> May, 2025 and which are not in issue in this application. Counsel relied on the case of Philip Kiprotich Tuitoek v Edna Jebiwott Kiplagat & 2 others ELC Case No 72 B of 2019. Counsel urged the court to dismiss the application with costs to the Plaintiff/Respondents.

### **Analysis And Determination**

18. The issue for determination is whether this court should set aside its orders dated 19<sup>th</sup> May, 2025. The Applicants in this application are not sure of what orders they are seeking before the court. The body of the submissions seems to mix two issues, one for the substantive orders for injunction, which were issued after hearing the parties, where counsel for the parties participated, filed submissions and a ruling was delivered on 6<sup>th</sup> May 2025.
19. The court reviewed the said order upon being prompted by the Plaintiff/Applicants on an error in the order whereby the court did not include a limb, which had been sought for the assistance of OCS Kaptembwo Police Station for compliance. The court had allowed the Application on merit but due to an oversight, it did not specifically include that limb.



20. This review to correct an error could have been done suo moto by the court, without an application by either party, as it would not affect the substantive orders of injunction that had already been issued. There was no need for the participation of the parties in the Application, since the court would have corrected the error anyway without causing any prejudice to the parties.
21. The Applicants have submitted that the injunction order granted by the court was used to evict them from the suit premises. The Applicants know what steps to take when an order is implemented in excess of what it had directed.
22. The Applicants are also asking this court to restore them to their possession of the suit property, Nakuru Municipality Block 20/43, pending the hearing and determination of this suit. This court has already pronounced itself on this issue vide its ruling dated 6<sup>th</sup> May, 2025. This court finds that the Notice of Motion Application dated 29<sup>th</sup> May, 2025, lacks merit and is hereby dismissed with costs. The parties should comply with order 11 and fast track the hearing of this case.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 7<sup>TH</sup> DAY OF OCTOBER 2025.**

**M. A. ODENY**

**JUDGE**

