



Waita v National Lands Commission & another; Kenya National Highways Authority (Interested Party) (Miscellaneous Application E002 of 2023) [2025] KEELC 5811 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5811 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
MISCELLANEOUS APPLICATION E002 OF 2023**

**YM ANGIMA, J
JULY 31, 2025**

BETWEEN

MARY WARUGURU WAITA APPLICANT

AND

NATIONAL LANDS COMMISSION 1ST RESPONDENT

STEPHEN MBAKI WAITA 2ND RESPONDENT

AND

KENYA NATIONAL HIGHWAYS AUTHORITY INTERESTED PARTY

RULING

1. By a notice of motion dated 23.01.2023 expressed to be filed pursuant to Sections 3A and 63 (e) of the [Civil Procedure Act](#) (Cap 21), Order 40 rule 1 and Order 51 rule 1 of the [Civil Procedure Rules](#) and all enabling provisions of the law, the applicant sought the following orders;
 - a. That the matter be certified urgent.
 - b. That the honourable court be pleased to grant a stay of execution of the order issued by the Environment and Land Court on the 24.02.2022 in Civil Suit No. 50 of 2021 ordering the 1st respondent to pay the 2nd respondent Kshs.33.4 million in purported compensation for compulsory acquisition of Plot No. 2519.VI/MN.
 - c. That the matter in Civil Suit No. 50 of 2021 be heard afresh as the constitutional and legal rights of the applicant have been infringed upon by the decision of the Environment and Land Court.



- d. That the applicant be included in the award for compulsory acquisition of Plot No. 2519.VI/MN.
 - e. That the costs of this application be provided for.
 - f. Any other further relief that the honourable court may deem fit and just to grant in the circumstance.
2. The motion was based upon the grounds set out on the face of the motion and the supporting affidavit sworn by the applicant on even date. It is clear from the said application that the applicant is aggrieved by the judgment and decree of the court passed in Mombasa ELC No. 50 of 2021. She, therefore, wanted the judgment to be set aside and the suit heard de novo so that she may be heard in the matter because she believed that she was entitled to compensation for the compulsory acquisition of Plot No. 2519/VI/MN.
 3. The material on record shows that the parties were given an opportunity to file and exchange responses and submissions on 05.11.2024. They were also granted an extension of 30 days on 04.02.2025 to do the needful. The record shows that there was no response to the said application. There were also no submissions.
 4. It is clear that the applicant is aware of the existence of the primary suit in which the impugned decree was passed. It is not clear from the material on record why the applicant did not challenge the decree in the suit in which it was passed. The court is of the opinion that it would be improper and highly irregular to challenge a decree passed by a court of competent jurisdiction by filing a separate miscellaneous application.
 5. The court is further of the opinion that this court has no jurisdiction to overturn the decree in the primary suit since it was passed by a court of coordinate jurisdiction. It was the duty of the applicant to apply to join that suit and challenge the decree therein. If she was not successful in her bid to join the primary suit, then her remedy would probably lie in an appeal to a higher court but not in initiating separate proceedings before a court of coordinate jurisdiction.
 6. The upshot of the foregoing is that the court finds the instant application incompetent and bad in law. As a consequence, the notice of motion dated 23.01.2023 is hereby struck out with no order as to costs.
- It is so ordered.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 31ST DAY OF JULY, 2025.

Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Mr. Brian Okoth for the interested party

Mr. Wamwayi for the 2nd respondent

No appearance for the 1st respondent

No appearance for the applicant

