



Syokimau Residents Association v Brisk International Ltd & 2 others (Environment and Land Case 14 of 2020) [2025] KEELC 8147 (KLR) (26 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8147 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 14 OF 2020**

**NA MATHEKA, J
NOVEMBER 26, 2025**

BETWEEN

SYOKIMAU RESIDENTS ASSOCIATION PLAINTIFF

AND

BRISK INTERNATIONAL LTD 1ST RESPONDENT

THE COUNTY PHYSICAL PLANNER, MAVOKO SUB-COUNTY 2ND RESPONDENT

THE COUNTY GOVERNMENT OF MACHAKOS 3RD RESPONDENT

RULING

1. The first application is dated 12th March 2024 and is brought under Article 50 of *akn ke act 2010 constitution the Constitution*, Section 3, and 34 of the Civil Procedure Act Cap 21, Section 80, Order 45 Rule 1 and Order 51 Rule 1 and seek the following orders;
 1. That this Honourable Court be and is hereby pleased to set aside vacate its orders of 7th February 2024.
 2. That this Honourable Court be and is hereby pleased to open the Plaintiff's case reserve a hearing date.
 3. That this Honourable Court be and is hereby pleased to reserve a hearing for cross-examination of the 1st Defendant's witness.
2. It is supported by the affidavit of Winfred Clerkson Ochieng and on the following further that this matter came up for hearing on the 7th February 2024. However, the Advocate having conduct of this matter being Clerkson Ochieng inadvertently misdiarised the matter as coming up on the 8th February, 2024. That the Applicant had previously filed application dated 26th January 2024 seeking to court's leave to file additional documents and received communication dated 7th February 2024 from the 1st



Defendant Respondent conceding to their application. That Counsel for the Applicant was unable to file the additional documents due to the 3 days rule considering the date when the 1st Defendant Respondent conceded the application. That the inadvertent absence of the Plaintiff's Counsel should not be meted on the Plaintiff. That no prejudice will be occasioned to any party in the suit if the orders sought herein are granted as prayed.

3. This court has considered the application and the submissions therein. In the case of *Utalii Transport Co. Ltd and 3 Others vs N.I.C. Bank and Another* (2014) eKLR, the court held that;

“It is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court.”

33. It is also the duty of the parties to assist the court to adjudicate on the matters brought before it expeditiously as was held in *Gideon Sitelu Konchella vs Daima Bank Limited* (2013)eKLR where the court while citing the case of *Mobil Kitale Service Limited vs Mobil Oil Kenya Limited*, held that:-

“It is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice by delay would be a thing of the past. Justice would be better served if we dispose of matters expeditiouslythe overriding objection of this Act and Rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.”

- 4 The Plaintiff Applicant advocate states it was an inadvertent mistake. The Advocate having conduct of this matter one Clerkson Ochieng inadvertently misdiarised the matter as coming up on the 8th February, 2024. That the Applicant had previously filed application dated 26th January 2024 seeking to court's leave to file additional documents and received communication dated 7th February 2024 from the 1st Defendant Respondent conceding to their application. This application is dated 12th March 2024. I find that the present application has not been brought merely to delay and or to obstruct justice. In the case of *Martha Wangari Karua vs IEBC Nyeri Civil Appeal No.1 of 2017* the Court of Appeal held as follows;

“The Rules of Natural Justice require that the court must not necessarily drive any litigant from the seat of justice without a hearing, however weak his or her case may be.”

5. The Respondent states that the Plaintiff has failed and or neglected to fix the matter for hearing. However, this being a land matter I find that the delay is excusable. I therefore find this application merited and I grant it on condition that the Plaintiff fixes a hearing date within 30 days from the date of this ruling. Cost of this application to be in the cause.
6. The second application is dated 21st November 2024 and is brought pursuant to Order 40 Rule 7 of the Civil Procedure Rules seeking the following orders;
1. That this application be certified urgent, and heard ex-parte in the first instance.
 2. That pending the hearing and determination of this application inter-partes, this Honourable Court be pleased to issue an order setting aside discharging the injunction orders issued on 4th June, 2021 as a result of Ruling delivered by Justice O.A. Angote on the even date.



3. That this Honourable Court be pleased to issue an order setting aside discharging the injunction orders issued on 4th June, 2021 as a result of Ruling delivered by Justice O.A. Angote on the even date.
4. That this Honourable Court be pleased to issue an order compelling the 3rd Defendant Respondent to vet the approvals sought by the 1st Defendant Applicant on construction of Land Reference Numbers 13323 117, 118, 119 and 120 (Originally L.R. 12715 267).
5. That costs of this Application be provided for.
7. It is premised on the grounds on 21st February, 2020, the Plaintiff 1st Respondent, filed this instant suit against the Defendants. Upon filing the suit, the Plaintiff 1st Respondent filed an application dated 21st February, 2020 against the Applicant 1st Defendant seeking for temporary injunction be issued against the 1st Defendant Respondent by itself, its agents, servants and or representatives stopping all construction works on property Land Reference Numbers 13323 117, 118, 119 and 120 (Originally L.R. 12715 267). On 4th June, 2021, Honourable Justice O.A. Angote delivered its Ruling and allowed the application. That according to the said Ruling, the Injunction Orders was to be in force pending approvals from County Government of Machakos.
8. Up to now, more than 3 years after the Ruling was delivered, the 3rd Defendant Respondent has not vetted the approvals sought by the 1st Defendant Applicant and or communicated to the latter whether the approval has been vetted and passed. The main suit was certified ready for hearing and the first hearing date set for 10th May, 2023. During the above said date for hearing, both the Plaintiff 1st Respondent's and 1st Defendant Respondent's Counsels were present in court together with their Witnesses. However, the hearing did not proceed as the Plaintiff 1st Respondent requested that a consolidated List of Documents for both parties be prepared. The 1st Defendant Respondent prepared the Consolidated List of Documents, filed and served upon all the parties.
9. During the next hearing date given by the court, 17th October, 2023, the Applicant Plaintiff's Counsel sought an adjournment through a counsel holding brief, stating that Mr. Ochieng (the Plaintiff 1st Respondent's Counsel) was unwell and thus could not attend the hearing. The hearing was vacated and a further hearing date given for 7th February, 2024.
10. Four days before the hearing, the Plaintiff 1st Respondent served an application dated 26th January, 2024, to the 1st Defendant Respondent. The Application was seeking orders to file further list of documents. Upon receipt of the said Application, the 1st Defendant Applicant immediately did a letter on 5th February, 2024 to the Plaintiff 1st Respondent's Counsel responding to their application and sent it via mail. The content of the letter was that the 1st Defendant Applicant consented to the Plaintiff filing the additional document on condition that the same is filed and served between that day (5th February, 2024) and 7th February, 2024 so that the hearing proceeds as stated. However, the Plaintiff 1st Respondent's advocate did not respond to the said email and or letter.
11. On 7th February, 2024 when the matter was mentioned before the Court and the Plaintiff 1st Respondent's advocate was absent, Mr. Achach the advocate for the 1st Defendant Applicant requested the Judge to allow him reach out to Mr. Ochieng's advocate for the Plaintiff 1st Respondent. Mr. Achach called Mr. Ochieng's about three times on his mobile phone number 0713161131 but the phone, though rang, was not picked. Mr. Achach further called the Law Firm of Naikuni Ngaah and Miencha Company Advocates through phone number 0722606060 and spoke to the lady who received the phone and informed her to advise Mr. Ochieng of the impending hearing of the case, to which the



- lady promised to do. Mr. Achach further sent Mr. Ochieng, the Plaintiff 1st Respondent advocate a Message through the SMS. Mr. Ochieng never responded to the SMS message to date.
12. Immediately after the hearing which took place on 7th February, 2024 which proceeded without the Plaintiff 1st Respondent's Counsel, the 1st Defendant Applicant wrote a letter to the Plaintiff 1st Respondent's counsel informing them of the court's directions on filing the submissions and the timelines thereto; and sent it via mail. Further to the letter, 1st Defendant Applicant's Advocate drafted a Mention Notice informing the Plaintiff Applicant of the date given for 10th April, 2024 and served them; an Affidavit of Service for the same was filed. The Plaintiff 1st Respondent did not file nor serve their Submissions to the 1st Defendant Applicant, neither did they communicate in any manner whatsoever. After the timeline given to the Plaintiff 1st Respondent to file and serve their Submissions lapsed without the same being served upon the 1st Defendant Applicant, the later had no option but to start working on its Submissions. The 1st Defendant Applicant drafted their Submissions together with the List of Authorities, filed and served to the Plaintiff 1st Respondent and all the parties involved in the suit.
 13. This court has considered the application and the submissions therein. The Applicant states that the Plaintiff 1st Respondent instead filed and served an Application dated 12th March, 2024 to set aside the Hearing of 7th February, 2024 which they have dragged their feet in prosecuting it. The Application is still pending in court and has a Mention date of 10th February, 2024. The 1st Defendant Applicant continues to suffer as a result of the Injunction Orders issued by the Honourable Court. That the Applicant is the registered owner of the land and the same is not public land. That there had not acquired the land fraudulently and the title is in terms of Section 23(1) of the Registration of titles Act CAP 281 absolute and indefeasible. That the National Land Commission overstepped its mandate by purporting to recommend replanning of the area as this property is not public. That they obtained all the necessary approvals from the County Government of Machakos. That immediate neighboring properties are carrying out commercial businesses including schools, hotels and restaurants.
 14. Be that as it may, Section 1A of the *akn ke act 1924 3 Civil Procedure Act* provides for the overriding objective of the *akn ke act 1924 3 Civil Procedure Act* and the rules made thereunder and provides as follows:
 - 1A (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
 - (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
 - (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.
 15. Section 1B of the same Act, on the other hand provides for the duty of court and states:
 - (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims —
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;



- (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
- (e) the use of suitable technology.

16. As stated earlier and this being a land matter the court found the delay is excusable and granted the earlier application reopening the matter. It would then be premature to lift the orders of injunction at this stage bering in mind that the court has not had the opportunity to listen to all the evidence and interrogate all the documents. I find that the application is not merited and I dismiss it. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 26TH DAY OF NOVEMBER 2025.

N.A. MATHEKA

JUDGE

