

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELC (LA) E023 OF 2025

PAUL LEMAYIAN NAITAWANG.....
APPELLANT

VERSUS

ABEL MORANGA ONGWACHO.....
RESPONDENT

RULING

1. Upon consideration of the application dated 10/07/2025 seeking renovation of the petrol station built on plot number 192 Lolgorian town, as well as the grounds in support thereof, together with the supporting affidavit and the supplementary affidavit, both of which allude to leakage in the petrol Tanks, *interalia*.
2. Upon consideration of the Replying affidavit in opposition to said application in which the Respondent alludes to the application as drafted seeks final orders, and which order had been sought orally during the delivery of Ruling in respect a stay of execution application.
3. Having heard oral submissions from the counsels for both parties, Mr. Onyango Jonyo Learned Counsel for the Applicant who placed reliance on the application, the supporting and supplementary affidavit and argued the court to allow the Applicant to run the petrol station.
4. Having equal heard the oral submissions of Ms. Wangui learned counsel for the Respondent who submitted and placed reliance on the replying affidavit, submitting *interalia* that the orders sought in the current application had been sought in on 1st of July 2025 when the court delivered a ruling on a stay of execution application, and hence the application is a relitigation, and further that the order sought are

final in nature, as renovations will make alteration of the suit property whose ownership is yet to be determined.

5. Noting further that the court in reliance with the deposition in the supporting and supplementary affidavits, that the petrol tanks were leaking, directed the Applicant to avail and file a report from EPRA on the state of the petrol station and any leakages of the petrol tanks and parties to file written submissions on the said report.
6. Noting further that the Applicant did not file the said report within the time given or at all, hence no evidence of the petrol tanks leakages and or no submissions were filed on the same.
7. Recognizing the orders of stay of execution pending appeal issued on 1/7/2025 which orders are meant to preserve the subject matter.

Issues of Determination

8. Now having taken into account the application, the rival affidavits and submissions, the issues presenting themselves for determination are; -
 - (i) whether or not the application is merited,
 - (ii) what orders ought to issue and
 - (iii) who bears the costs of the application.

Analysis and determination.

9. The basis for the application is that the petrol tanks were leaking and needed repairs; this was deponed at paragraphs 7 of the supporting affidavit and repeated at paragraphs 11 of the supplementary affidavit. The court required the Applicant to provide a report from EPRA on the state of the tanks so as to confirm whether the same are leaking.
10. The Applicant did not file the said report, denying the court an independent verification of his allegation.
11. Having not offered the proof of the leaking tanks requiring renovation, the court finds that basis of the application have not been

proven, and in so far as the basis of the application here not been proven their application thus lacks merit.

12. The court note further that an issue of access to the washroom of the petrol station was consented to by the parties and is no longer an issue for determination.
13. The court thus find no merit in the present application but clarifies that the Applicant is at liberty to operate the petrol station and ought to be granted access to it, but no renovations shall take place as no basis for the same was laid before court.
14. The upshot is that the application dated 10/07/2025 lacks merit and it is hereby dismissed with cost in the cause.

Dated at Kilgoris 26th day of January, 2026

Hon. M.N. Mwanyale
Judge

In the presence of

CA - Sylvia/Sandra/Clara

Ms. Wangui for the Appellant/Respondent

Mr. Onyango for the Respondent/Applicant