



**Munga & another v Bulkon Builders Limited & 3 others (Environment and Land Case 188 of 2018) [2026] KEELC 668 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 668 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 188 OF 2018  
YM ANGIMA, J  
FEBRUARY 12, 2026**

**BETWEEN**

**OMAR MUGALA MUNGA ..... 1<sup>ST</sup> PLAINTIFF**

**IDD NGALA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**BULKON BUILDERS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**OCS BAMBURI POLICE STATION ..... 2<sup>ND</sup> DEFENDANT**

**DEPUTY COUNTY COMMISSIONER KISAUNI ..... 3<sup>RD</sup> DEFENDANT**

**OCPD KISAUNI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By a notice of motion dated 27.08.2024 filed pursuant to Sections 1A 1B, 3A and 63 of the [Civil Procedure Act](#) (Cap 21) and the inherent jurisdiction of the court, the 1<sup>st</sup> defendant sought an order for demolition of all the structures the plaintiffs had put up on plot No. 322/1/MN (the suit property) under the supervision of the Deputy County Commissioner, Kisauni Sub-County and the OCPD Kisauni. The 1<sup>st</sup> defendant sought costs of the application.
2. The application was based upon the grounds set out in the face of the motion and the contents of the supporting affidavit sworn by Nileshkumar Bhimji Harji on 27.08.2024. The 1<sup>st</sup> defendant stated that the plaintiffs' suit was dismissed for non-attendance on 02.05.2024 hence they had no legitimate pending claim over the suit property. It was contended that they have continued to erect additional structures on the property in a bid to wrongfully entrench themselves on the suit property.
3. The 1<sup>st</sup> defendant also contended that the plaintiffs' had scant respect for court orders in that they had previously constructed additional structures on the suit property in violation of a status quo order.



As a result, the 1<sup>st</sup> defendant urged the court to allow the application so that they may remove the plaintiffs' structures and recover possession of the suit property.

4. The plaintiffs filed a replying affidavit sworn by the 1<sup>st</sup> plaintiff on 25.10.2024 in opposition to the application. They contended that the application was frivolous, vexatious and lacking in merit. It was contended that the dispute concerning the suit property affected over 50 households and it could only be resolved through a full hearing of the suit. The plaintiffs stated that they had been in occupation of the suit property for ages and that they inherited the same from their grandparents hence they had acquired some proprietary rights over the same.
5. When the application was listed for directions it was directed that it shall be canvassed through written submissions only. The parties were consequently granted timelines within which to file and exchange their submissions. The record shows that the 1<sup>st</sup> defendant's submissions were filed on 30.06.2025 but the plaintiffs' submissions were not on record by the time of preparation of the ruling.
6. The court has perused the motion dated 27.08.2024, the replying affidavit in opposition thereto as well as the material on record. The court is of the view that the main question for determination is whether or not the 1<sup>st</sup> defendant is entitled to the prayers sought in the application.
7. There is no doubt from the material on record that the plaintiffs' suit claiming an interest in the suit property was dismissed for non-attendance on 02.05.2024. There is also no dispute that the plaintiffs filed an application dated 03.05.2025 seeking the setting of the dismissal order but the application was dismissed by the court on 31.07.2025. There is no indication on record if the plaintiffs ever appealed that decision to a higher court.
8. As matters stand now, it would appear that the plaintiffs have no pending suit or claim over the suit property. However, a perusal of the court file indicates that the 1<sup>st</sup> defendant has a counter-claim dated 30.05.2019 in which it was pleaded that the 1<sup>st</sup> defendant was the registered proprietor of the suit property and that the plaintiffs were merely trespassers who were out to waste the property by constructing some illegal structures thereon. As such, the 1<sup>st</sup> defendant sought the following prayers in the counter claim;
  - a. A permanent injunction restraining the plaintiff whether by himself or through his employees, servants, families, or agents or howsoever else whether by himself or through a third party claiming through him from wrongfully, illegally and unlawfully trespassing onto the 1<sup>st</sup> defendant's property known as plot No. 322.I/MN, Utanga and/or committing acts of waste thereon and/or building any structures thereon and/or interfering with the 1<sup>st</sup> defendant's proprietary rights and quiet possession of its property in any manner howsoever or whatsoever.
  - b. Damages for trespass.
  - c. Costs of an incidental to this suit and
  - d. Any other relief this honourable court may deem fit to grant.
9. The court is of the opinion that the orders for demolition and removal of the plaintiffs' structures which are sought in the application are orders of a final nature which should only be granted upon conclusion of the suit. The court is of the view that even though the plaintiffs' claim was dismissed on 02.05.2024, the suit is not yet concluded because the 1<sup>st</sup> defendant has a pending counter-claim which has never been heard and determined. As a result, the court finds the 1<sup>st</sup> defendant's instant application to be premature. The 1<sup>st</sup> defendant appears to have put the cart before the horse.



10. The upshot of the foregoing is that the court finds no merit in the 1<sup>st</sup> defendant's application for leave to demolish the plaintiffs' structures on the suit property. As a result, the notice of motion dated 27.08.2024 is hereby dismissed with no order as to costs. The 1<sup>st</sup> defendant shall be at liberty to set down its counter-claim for hearing.

Orders accordingly.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2026.**

.....

**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Khagram for 1<sup>st</sup> defendant

No appearance for plaintiffs

No appearance for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants

