



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC LAND MISCELLANEOUS APPLI. NO. E090 OF 2025

MARK MWANGANGI.....
APPLICANT

VERSUS

NORMAN SOMBA
MUTISO.....RESPONDENT

RULING

1. This ruling pertains to an unopposed application dated 22/09/2025, filed by the applicant. The motion is presented as being made in accordance with **Order 37, Rules 1 and 3** of the **Civil Procedure Rules; Sections 1A, 1B and 3A** of the **Civil Procedure Act; Section 73** of the **Land Registration Act, 2012** and all enabling provisions of the law and the applicant seeks the following reliefs from the court.

a. Spent.

b. That this honourable court be pleased to issue an order directing the Land Registrar, Makueni County, to forthwith remove and/or lift the caution registered by the respondent herein on the 30th day of September, 2016, against land parcel number Okia/Mukuyuni/2172.

c. That the costs of this application be provided for.

2. The motion is supported by the grounds set out in the body thereof and the supporting affidavit of the applicant, sworn on the instant date. In summary, he states that the respondent filed Machakos CMCC No. 87 of 2016, challenging the ownership of **Land Parcel No. Okia/Mukuyuni/2172** by the applicant in the year 2016. Subsequently, by a court order dated 24th March 2016, the suit was dismissed for lack of jurisdiction to hear and determine the matter. Despite the dismissal, the respondent lodged a caution on the said parcel of land on 30th September 2016 and has not taken any steps to have it removed to date. Furthermore, the respondent has not filed any fresh suit before a court of competent jurisdiction, or has he requested the Land Registrar to have the caution lifted.

3. This court has meticulously examined the application, which is referenced as the “originating summons”, including its grounds

and affidavit, and the issue for determination is **whether the motion is an abuse of court process.**

4. Concerning this matter, it is a well-established legal principle that the court possesses inherent jurisdiction to protect itself against abuse or to prevent its processes from being misused. An abuse of court process is any departure from established good order that significantly deviates from the reasonable use of court process; such abuse occurs when an individual makes excessive, improper, or contradictory use of court procedures, thereby contravening the natural legal principles. The persuasive decision in **Satya Bhama Gandhi v. Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR)** outlined several examples of such instances of abuse of court process.
5. As to the definition of the term “abuse of the court process,” reference is made to the decision in the Court of Appeal case of **Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 others [2009] KECA 453 (KLR)**, which reaffirmed the definition as set forth in two foreign court decisions in the following manner: -

“In BEINOSI v WIYLEY 1973 SA 721 [SCA] at page 734F-G a South African case heard by the Appeal

Court of South Africa, Mohomad CJ, set out the applicable legal principle as follows: -

“What does constitute an abuse of process of the court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of “abuse of process.” It can be said in general terms, however, that an abuse of process takes place where the proceedings permitted by the rules of court to facilitate the pursuit of the truth are used for purposes extraneous, to that objective.”

Again the Court of Appeal in Abuja, Nigeria in the case of ATTAHIRO v BAGUDO 1998 3 NWLL pt 545 page 656, stated that the term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. The

term abuse of process has an element of malice in it.

In the Nigerian Case of KARIBU-WHYTIE J Sc in SARAK v KOTOYE (1992) 9 NWLR 9pt 264) 156 at 188-189 (e) the concept of abuse of judicial process was defined:-

“The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. Its one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice ...”

6. In the present case, it is contended that the basis of this motion is that the respondent's suit was dismissed in **Machakos CMCC No. 87 of 2016**, and a court order dated 24th March 2016 has been presented to this court to substantiate this claim. However, a review of this order does not reveal any dismissal; rather, the lower court merely stood over the matter generally as it lacked jurisdiction to handle land matters at that time. Nonetheless, the issue regarding the jurisdiction of the magistrate's court to handle land matters is now conclusively settled.

7. To ensure reasonable and equitable access to justice in counties and in exercise of **Article 169 (2)** of the **Constitution, Section 26 (3) and (4)** of the **ELC Act** provides that gazetted magistrates are conferred with jurisdiction to handle matters on land and environment but subject to pecuniary and territorial limitations which are provided for in **Section 9(a) of the Magistrates' Act, Section 26 (4)** of the **ELC Act** and **Sections 12 and 15** of the **Civil Procedure Act**. This latter provision states: -

“(4) Subject to Article 169(2) of the Constitution, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle –

(a)disputes relating to offences defined in any Act of Parliament dealing with environment and land; and

(b)matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.

8. Considering the existence of the other matter, which the applicant has deceitfully misled the court into believing was dismissed, it was not permissible for them to pursue a fresh

matter. Their actions are therefore tantamount to *sub judice*. Furthermore, guided by the doctrine of *lis pendens*, all parties before the lower court are automatically obligated to preserve the subject property during the pendency of the proceedings; consequently, the caution is appropriately registered, as it serves as a notice to the public of the pending court proceedings. Thus, this court finds the application dated 22/09/2025 to be an abuse of court process and hereby strikes it. Since it was unopposed, there shall be no orders as to costs. This file is hereby effectively marked as closed.

Orders accordingly.

Delivered and Dated at Machakos this 17th day of March, 2026.

**HON. A. Y. KOROSS
JUDGE
17.03.2026**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Miss. Wanaina holding brief for Mr. Kakinga for the Applicant.

No appearance for Respondent.

ORIGINAL