



**Kirwa & another (On their own behalf and on behalf of 13 others) v Misoi & 5 others
(Environment and Land Case 104 of 2010) [2026] KEELC 2188 (KLR) (14 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2188 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 104 OF 2010**

CK NZILI, J

APRIL 14, 2026

BETWEEN

EZEKIEL KIRWA 1ST PLAINTIFF

MZEE ARAP KITUR 2ND PLAINTIFF

ON THEIR OWN BEHALF AND ON BEHALF OF 13 OTHERS

AND

MICHAEL KIPRUTO MISOI 1ST DEFENDANT

NIXON KIPSANG 2ND DEFENDANT

JONATHAN SERONEI 3RD DEFENDANT

JOSEA KAPTIH KIRWA 4TH DEFENDANT

JOSEPH CHERUIYOT KUTUNY 5TH DEFENDANT

NOAH K BARNG'ETUNY 6TH DEFENDANT

RULING

1. The court is asked through a certificate of urgency dated 10/4/2026 to stay a notice to show cause dated 25/8/2025, execution and proclamation notices dated 26/3/2026. It is also asked to set aside, discharge, and or lift the proclamation and warrant of attachment against the plaintiff's property. The court is also asked to review or set aside the Deputy Registrar's Ruling and pronouncement dated 16/10/2025, and that the applicants be allowed to defend themselves, for they were condemned unheard during the notice to show cause.
2. The grounds are set out on the face of the application and in a supporting affidavit of Francis N. Satia, sworn on 10/4/2026. After setting out the history of the matter, the deponent admits that a Notice to Show Cause came up on 16/10/2025 before the taxing master, to which his lawyer on record raised a



preliminary objection and grounds of opposition premised on Section 37(1) of the *Civil Procedure Act* and Order 22 Rule 11 of the Civil Procedure Rules, which he says the taxing master did not consider on merits and instead proceeded to issue the warrant of execution saying that the lawyer representing them had no right of audience.

3. The applicant says that the application has been timeously brought for some of the plaintiffs have since passed on, and others have baffling chronic illnesses and old age. The applicant says that on 31/3/2026, they were served with a proclamation notice dated 3/3/2026, given a 7-day notice, while others were served with one dated 2/4/2026. The applicants depose that the deceased plaintiffs have not been substituted.
4. The court has carefully looked at the application. It notes that there is a ruling by the taxing master dated 23/6/2025 on taxation of costs, following this court's order dated 10/2/2025, marking the suit as withdrawn with costs. From the C.T.S, the court notes that the applicants filed an application dated 4/12/2025, which the Deputy Registrar struck out for lack of jurisdiction, seeking a stay and that the suit be reinstated for hearing on merit. The supporting affidavit was sworn by Ezekiel Kirwa.
5. Jurisdiction in everything, without it, a court down its tools. Disclosure of material facts is critical in an application seeking for equitable reliefs. Any party aggrieved by the orders of a taxing master and a Deputy Registrar in exercise of taxation or execution of decree or order has to move the court within the timelines set under Order 22 of the Civil Procedure Rules by invoking the court's jurisdiction set under Order 49 Rule 7(2) and (3) of the Civil Procedure Rules.
6. What I have before me is neither an appeal nor a reference. This court lack jurisdiction to entertain the prayers sought in the application dated 10/4/2026, unless approached through the manner in which the law envisages while exercising appellate jurisdiction. Following the law is not an option but mandatory. Whoever approaches courts must come to terms that procedure is the handmaiden of substance.
7. An appellate court must be moved properly by any aggrieved party by the Deputy Registrar's order or ruling while exercising its jurisdiction under Orders 22 and 49 of the Civil Procedure Rules. For instance, the applicants, if aggrieved by the dismissal of the preliminary objection and the Notice to Show Cause or the taxation, had to move the appellate court within 7 days of the decision. The application before me is being made through the wrong procedure, outside the timelines set by the law.
8. The upshot is that I find the application both incompetent and an abuse of the court process.
9. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 14TH DAY OF APRIL 2026.

In the presence of:

Court Assistant - Dennis

Nanjumbia for Savatia for plaintiffs/applicants present

Kiarie for defendants/respondents

HON. C.K. NZILI

JUDGE, ELC KITALE.

