



Kibowen v Chebore & 2 others (Environment and Land Case E001 of 2025) [2025] KEELC 5520 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5520 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND CASE E001 OF 2025**

**L WAITHAKA, J
JULY 23, 2025**

BETWEEN

**MARK KIPTUM KIBOWEN ALIAS FRANCIS CHEPTUMO
CHELEGAT PLAINTIFF**

AND

**SAMUEL CHEROP CHEBORE 1ST DEFENDANT
NAFTALI BOWEN 2ND DEFENDANT
THE LAND REGISTRAR BARINGO COUNTY 3RD DEFENDANT**

RULING

1. The notice of motion application dated 25th March 2025 seeks orders of stay of proceedings and/ or execution of the ex-parte orders issued on 11th March 2025 and all consequential orders emanating therefrom; that the court be pleased to review and or set/ aside its orders of 11th March 2025 and deliver a ruling on the plaintiff’s application dated 20th January, 2025 after considering the 1st defendant’s replying affidavit sworn in 10th March, 2025.
2. As can be discerned from the grounds on the face of the application and the supporting affidavit sworn by Stanley Kagunza on 25th March 2025 and supplementary affidavit sworn on 5th June 2025, the application is postulated on the grounds that the plaintiff/respondent had filed this suit together with an application dated 20th January 2025 seeking an order of injunction to restrain the defendants, either by themselves or through their servants and or agents from trespassing into, interfering with and/ or in any other way dealing and or doing any other acts inconsistent with the plaintiffs/ applicants peaceful occupation and/ or possession of all that parcel of land namely Baringo/Kiboino B/285 (suit property) pending hearing and determination of the application and the main suit.



3. He deposes that when the application came for inter parties hearing on 18th February 2025, the 1st defendant was given time to file a replying affidavit; that he filed a replying affidavit on 11th March 2025 dated 10th March 2025 but had difficulty logging in during morning call over on 11th March 2025 when the application came for inter parties hearing due to loss of power; that at 9.35 a.m., he learnt that the application was allowed on account that the application was unopposed. He states that his non-attendance was not deliberate but caused by circumstances beyond his control; that the order of injunction granted is tantamount to evicting the 1st defendant from the suit property which is highly prejudicial to him. He urges the court to review and set aside the impugned orders of 11th March, 2025 and proceed to deliver a considered ruling taking the replying affidavit into account.
4. In opposition, the plaintiff/ respondent file a replying affidavit sworn on 5th April 2025, which the court will not consider as it was not paid for.
5. Pursuant to court's directions given on 20th May 2025, the application was disposed off by way of written submissions.
6. Only the applicant/1st defendant filed submissions dated 5th June, 2025. He identified one issue for determination which is whether the application is merited and submitted that he has adduced sufficient reason and grounds to be granted the orders sought. He gave his reason as connectivity challenges coupled with power outage. Further, that if he had succeeded in logging in, he was going to inform the court that he had already prepared a replying affidavit which was in the process of being filed. He submitted that mistake of counsel should not be visited on the 1st defendant and relied on the cases of *Sadar Mohamed v Charan Singh and Another*, *Belinda Murai & others v Amos Wanaina* (1978) eKLR, *Shah v Mbogo* (1967) EA 116 and *Branco Arabe Espnol v Bank of Uganda* (1999) 2 (EA).
7. I have looked at the court tracking system to establish what time the replying affidavit dated 10th March 2025 was filed and this is what was captured;
 - i. The replying affidavit was uploaded in the court tracking system on 11th March 2025 at 9.35 a.m
 - ii. A debit note was raised at 10.01 a.m
 - iii. Payment was made at 11.53 a.m on 11th March 2025
8. It is clear from the court tracking system that by the time the court issued the impugned orders between 9.00 a.m. and 9.35 a.m., the replying affidavit had not been filed and the application stood unopposed contrary to what is stated in paragraph 4 of the supporting affidavit by counsel for the 1st defendant; 'That on 11th March 2025, the 1st defendant filed a replying affidavit sworn in 10.03.2025 and at the time when the application came for hearing, on 11.03.2025, the plaintiff's said application was allowed on grounds that the same was unopposed' and paragraph 9 of his submissions,the failure to be in court by the 1st defendant's counsel to inform the court that a replying affidavit to the plaintiff's application had already been prepared and was in the process of being filed was not deliberate and was not designed to delay the cause of justice but was cause by genuine and sufficient reason''
9. The case management system shows that the replying affidavit was filed two hours after the application was heard and orders given. Counsel for the 1st defendant states that the 1st defendant was present in open court but when the court called the file out, only counsel for the plaintiff responded/was present. For the above reasons, I am not satisfied with the explanation given on why the replying affidavit was not filed on time and find no sufficient reason to persuade me exercise my discretion and review/ set aside the orders issued on 11th March 2025.



10. However, I need to clarify that the order given restraining the defendants, either by themselves or through their servants and or agents from trespassing into, interfering with and/ or in any other way dealing and or doing any other acts inconsistent with the plaintiff's/ applicants peaceful occupation and/ or possession of all that parcel of land namely Baringo/Kiboino B/285 was not be used to evict any person in occupation of the suit property pending the hearing and determination of the suit.
11. For the above reason, I find the application to be without merit and I dismiss it with no orders on costs as the respondent did not pay for the replying affidavit.
12. Orders accordingly.

DATED, SIGNED AND PUBLISHED AT KABARNET THIS 23RD DAY OF JULY, 2025

L. N. WAITHAKA

JUDGE

In the absence of all the parties;-

N/A for the Appellant

N/A for the Respondent

Court Assistant: Christine

