



Koros & 3 others v Tormoi (Environment and Land Miscellaneous Case E005 of 2024) [2025] KEELC 5448 (KLR) (21 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5448 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND MISCELLANEOUS CASE E005 OF 2024
GMA ONGONDO, J
JULY 21, 2025**

BETWEEN

**LINUS KIPKEMBOI KOROS 1ST APPLICANT
GREGORY KIPCHUMBA KOROS 2ND APPLICANT
ANDREW KIRWA ROTICH 3RD APPLICANT
PAULINE ROTICH 4TH APPLICANT**

AND

VALERIAN KIPNGETICH TORMOI RESPONDENT

RULING

1. The instant ruling relates to an application by way of a Notice of Motion dated 8th March 2024 by the four applicants through Cheruiyot Melly and Associates Advocates for orders;
 - a. Spent
 - b. That, this court be pleased to order the Officer Commanding Station Kabiyeet Police Station, to provide security to the County surveyor or his representative during subdivision of Land Parcel Number Nandi/Chepterwa/858 as ordered by the Court of Appeal.
 - c. Any other or further order as this Honourable Court may deem fit to grant.
 - d. Costs of the application be in the cause.
2. The application is premised upon the supporting affidavit of ten paragraphs sworn by the 2nd applicant for and on his own behalf and on behalf of his co-applicants. Copies of authority to sue, an order issued on 13th May 2022 by the Court of Appeal for sub division of Land parcel number Nandi/Chepterwai/858 and notice by Land Registrar marked as ‘GKK-1’, ‘GKK-2’ and ‘GKK-3’ respectively, are annexed to the application



3. Also, the application is anchored on five grounds stated on its face and the same include;
 - a. That, the Court of Appeal sitting in Kisumu Vide Civil Appeal No. 36 of 2018 issued an order on 13th Day of May 2022 for sub division of Land parcel No. Nandi/Chepterwa/858 to apportion the Respondents 0.3 Acres therein.
 - b. That, land issues, being volatile, requires the provision of security particularly when sub-division, partition or demarcation is undertaken by the surveyors.
4. The respondent through Kiboi Tuwai and Company Advocates, opposed the application by way of a replying affidavit of nineteen paragraphs sworn on 16th January 2025 together with the annexed documents namely; the originating summons/pleadings in Eldoret ELCC NO. 571 of 2012-VT-1, Judgment in the said suit-VT-2, Judgment in the Court of Appeal at Eldoret Civil Appeal No. 36 of 2018-VT-3, application for review of the Court of Appeal's judgment VT-4 and copy of the memorandum of appearance-VT-5. She averred in part that by VT-3, the Court of Appeal delivered judgment in favour of the applicants which provoked her application-VT-4. That the applicants violated Order 9 Rule 9 of the Civil Procedure Rules 2010 as shown in VT-5.
5. The respondent further averred that there are pending applications dated 30th September 2022 and 13th February 2023 before the Court of Appeal for stay of execution, review and status quo to prevail in the matter. That the said applications would be rendered nugatory if the instant application is allowed.
6. The application was heard by written submissions pursuant to the directions of the court given on 9th December 2024 and extended on 28th January 2025.
7. In the submissions dated 11th February 2025, learned counsel for the applicants made reference to the Court of Appeal orders which precipitated the application, the orders sought in the application and the pending applications at the Court of Appeal. It was submitted that the respondent's counsel did not display status quo orders or any other order regarding the applications in the Court Appeal. Counsel cited section 4 of the *Appellate Jurisdiction Act*, Articles 159 and 162 (2) (b) of *the Constitution* of Kenya 2010 as well as section 26 (3) and (4) of the *Environment and Land Court Act*, the case of Stephen Maina Kimanga and 4 others-vs-Lucy Waithira Mwangi and 2 others (2015) eKLR and section 27 of the *Civil Procedure Act* Chapter 21 Laws of Kenya, to fortify the submissions for the orders sought in the application.
8. By the submissions dated 6th April 2025, learned counsel for the respondent termed the application improper, mischievous, bad in law and a blatant abuse of the court process. Counsel submitted that the applicants violates Order 9 Rule 9 of the Civil Procedure Rules 2010 and relied on the case of John Langat-vs-Kipkemoi Terer and 2 others (2023) eKLR, Rule 42 of the Court of Appeal Rules and Order 5 Rule 2 (a) of the Civil Procedure Rules 2010 in opposition to the application.
9. In that regard, is the application meritorious?
10. It is noteworthy that the application was commenced further to the Court of Appeal order given on 13th May 2022 which reads, inter alia;

‘That sub division of land Nandi/Chepterwa/858 be affected and 0.3 acres thereof occupied by the respondent be transferred and registered in his favour..in his favour.
11. I have taken into consideration both the basis for and against the grant of the application alongside the submissions including Stephen Maina and John Langat cases (supra) cited therein. The applicants



- are seeking the orders in the application to make effectual the orders given by the Court of Appeal in the matter.
12. The orders sought on the face of the application are within the discretion of this court. The exercise of any discretion of the court, must be exercised judicially as noted in the case of Patel-vs-E.A Cargo Handling Services Ltd (1974) E.A 75.
 13. It must be noted that the applicants through their counsel have the right to have the orders of the Court of Appeal effected. In the case of Butt-vs-Rent Restriction Tribunal (1979) eKLR, the Court of Appeal observed that the litigants and their professional advisors are the best judges of their affairs.
 14. Be that as it may, the applicants violated Order 9 Rule 9 (Supra) and it is so demonstrated by VT-5 in this application.
 1. Furthermore, there are pending applications in the matter before the Court of Appeal which cannot run simultaneously with this application; see Judicial Commission of Inquiry into the Goldenberg Affair & 3 others-vs- Job Kilach (2003) eKLR.
 15. To this end, I find the instant application misplaced and inept.
 16. Wherefore, the application dated 8th March 2024, dismissed on 19th March 2024 and reinstated on 14th November 2024, is hereby struck out and each party to bear own costs of the same given the prevailing circumstances.
 17. It is notable that the court set this date and notified the parties accordingly given the age the application pursuant to Article 159 (2) (c) of *the Constitution* of Kenya 2010 that justice shall not be delayed.
 18. It is so ordered

DATED AND DELIVERED AT KAPSABET THIS 21ST DAY OF JULY 2025.

G MA ONGONDO

JUDGE

Present;

Mr Kiprono learned counsel for the applicants

Walter Kipkorir, court assistant

