



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC. MISC. CASE NO. 35 OF 2017**

**RICHARD NZIOKI MUINDI**

**KIMATU MUTUKU**

**CONSOLATA MWATHI**

**MARY MUSYIMI**

**& 484 OTHERS BELONGING TO VILLAGE D. SELF**

**HELP GROUP.....EX-PARTE APPLICANTS**

**VERSUS**

**THE SENIOR PRINCIPAL MAGISTRATE**

**MAVOKO LAW COURTS.....1<sup>ST</sup> RESPONDENT**

**THE O.C.S. ATHI RIVER POLICE STATION .....2<sup>ND</sup> RESPONDENT**

**ALDUS LIMITED .....INTERESTED PARTY**

**RULING**

1. What is before me is the Application by the Interested Party dated 10<sup>th</sup> May, 2017 in which it is seeking for the following orders:

***a. That the order given and issued by this Honourable Court on 11<sup>th</sup> April, 2017 be set aside.***

***b. That the costs of this Application be provided for.***

2. The Application is premised on the grounds that instead of the Ex-parte Applicants serving the Chamber Summons dated 3<sup>rd</sup> April, 2017 as directed by the court on 6<sup>th</sup> April, 2017, they filed a second Application on 11<sup>th</sup> April, 2017 seeking for a stay of eviction orders effectively amounting to an injunction directed to the 2<sup>nd</sup> Respondent and the Interested Party.

3. According to the Interested Party, in the second Application, the Ex-parte Applicants did not disclose to the court that the eviction order which they were seeking to stay and set aside had already been executed and had also been set aside by the 1<sup>st</sup> Respondent on 6<sup>th</sup> April, 2017 on the Ex-parte Applicants'

Application.

4. It is the Applicants' case that the court was misled into issuing the said orders; that the Applicants/Respondents withheld material information from the court relating to setting aside of the eviction orders and that the orders issued are adverse to public peace.

5. The Interested Party has deponed that it was not given an opportunity to be heard on the second Application and that the Ex-parte Applicants are using the orders they obtained in the second Application to deny the Interested Party access to its own property.

6. In response, the 1<sup>st</sup> Applicant deponed that their Judicial Review Application was founded on the ground that the Magistrate's court lacked jurisdiction to deal with the matter at hand; that the Application challenges the eviction orders and that after the Application was served on 6<sup>th</sup> April, 2017, the 2<sup>nd</sup> Respondent moved onto the suit premises on 7<sup>th</sup> April, 2017 and began evicting the Interested Parties.

7. According to the Applicants, the second Application was filed to meet the ends of justice, restore sanity and prevent the 2<sup>nd</sup> Respondent from their illegal actions; that the orders of 11<sup>th</sup> April, 2017 were granted after the court was satisfied that the 2<sup>nd</sup> Respondent and the Interested Party were bent on evicting them and that even after being served with the orders of 11<sup>th</sup> April, 2017, the 2<sup>nd</sup> Respondent and the Interested Party continued to destroy the Applicants' properties.

8. The Applicants' counsel submitted that the intended Judicial Review proceedings are ill informed; that the orders being challenged are not in force and that the court against whom the stay proceedings were sought has sufficient jurisdiction to try the matter therein.

9. Counsel submitted that the orders that were granted by this court gave the Ex-parte Applicant undue advantage in oppressing the Interested Party by denying it the right to own and utilize the suit land and that those orders should be set aside.

10. The Interested Party' advocate submitted that this court gave the impugned orders based on the evidence before it; that the issues relating to the Mavoko Law Court file shall be canvassed and determined in the main Judicial Review Application and that the Ex-parte Applicants' contention in the Judicial Review Application is the jurisdiction of the Magistrate to handle the dispute.

11. Counsel submitted that if the lower court did set aside the eviction orders, then there was no ground for continuing to evict his clients and that they did not mislead the court in issuing the orders.

12. Counsel filed numerous authorities which I have considered.

13. What is before me is not the main Application for Judicial Review orders, but an Application to set aside the orders of Mbogo J issued on 11<sup>th</sup> April, 2017.

14. The record shows that on 4<sup>th</sup> April, 2017, the Ex-parte Applicants filed the Chamber Summons dated 3<sup>rd</sup> April, 2017 together with the statutory statement and the Verifying Affidavit.

15. In the said Application, the Ex-parte Applicants sought for the following orders:

***a. That this Application be certified as urgent.***

***b. That leave be granted to the Applicants to apply for orders of prohibition and certiorari directed to the Senior Principal Magistrate Mavoko Law Court to prohibit him or any other Magistrate from continuing with the hearing of Mavoko Civil Cause No. 5 of 2017 and to quash the orders made on 6<sup>th</sup> February, 2017 in the said civil case.***

***c. That the grant of leave hereinabove do operate as a stay of the order dated 6<sup>th</sup> February, 2017 and all other consequential proceedings.***

16. In the said Application, which is Ex-parte in nature, the Ex-parte Applicants alleged that the Applicants have lived on the land since the early 1990's; that the Interested Party filed a suit against twelve (12) Defendants in the lower court on 10<sup>th</sup> January, 2017 and that without being served, Hon. L.P. Kassin issued an eviction order in Mavoko SPMCC No. 5 of 2017.

17. When the Application was placed before Mbogo J on 6<sup>th</sup> April, 2017, the Judge granted to the Applicants leave to apply for orders of prohibition and certiorari directed to the Senior Principal Magistrate, Mavoko Law Courts and prohibit the said Magistrate from hearing Mavoko SPMCC No. 5 of 2017 and quash the orders of 6<sup>th</sup> February, 2017 in the said suit.

18. Although the Ex-parte Applicants had prayed for the leave to operate as a stay of execution of the orders of 6<sup>th</sup> February, 2017, the court directed that the Application be served for hearing of that limb inter-partes. The date for hearing of the Application was to be fixed in the registry.

19. From the photographs annexed on the Chamber Summons of 3<sup>rd</sup> April, 2017, the process of demolishing the Ex-parte Applicants had already commenced.

20. Realizing that the Application dated 3<sup>rd</sup> April, 2017 could not be heard urgently as directed by the court, the Ex-parte Applicants' advocate filed a second Application under a certificate of urgency dated 8<sup>th</sup> April, 2017. The Application was placed before Mbogo J on 11<sup>th</sup> April, 2017.

21. After considering the Application dated 3<sup>rd</sup> April, 2017 and 11<sup>th</sup> April, 2017, the Judge granted to the Ex-parte Applicants an order staying the proceedings in the lower court and the eviction order of 6<sup>th</sup> February, 2017. This order effectively stayed the order of 6<sup>th</sup> April, 2017.

22. As I have stated above, the court, at an Ex-parte stage, can stay the orders that are being challenged in Judicial Review proceedings pending the hearing of the Judicial Review Application.

23. Indeed, that is what the court did on 11<sup>th</sup> April, 2017 after considering both Applications.

24. It is not true, as submitted by the Interested Party's advocate, that the court was misled into issuing the orders of 11<sup>th</sup> April, 2017. I say so because from the record, the court considered its earlier orders and proceeded to vary those orders on the basis of the Ex-parte Applicants' depositions.

25. Considering that this court has the jurisdiction of supervising the lower courts, and in view of the fact that the court will determine whether the lower court had the jurisdiction to issue the orders of 6<sup>th</sup> February, 2017 or not, the orders of 11<sup>th</sup> April, 2017 were issued by this court procedurally.

26. It cannot be argued at this stage that those orders infringes on the Interested Party's right to own his land when the issue of whether the Magistrate had the requisite jurisdiction to grant the orders he granted has been heard and determined by the court.

27. For those reasons, I dismiss the Application dated 6<sup>th</sup> April, 2017 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26<sup>TH</sup> DAY OF JANUARY, 2018.**

**O. A. ANGOTE**

**JUDGE**