



**Rooke v Wambui & 9 others (Environment & Land Case
146 of 2018) [2024] KEELC 280 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 280 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 146 OF 2018
FM NJOROGE, J
JANUARY 31, 2024**

BETWEEN

CLIFFORD GEORGE ROOKE PLAINTIFF

AND

RUTH NYAWIRA WAMBUI & 9 OTHERS DEFENDANT

RULING

1. This is a ruling on the Applicant's undated Notice of Motion filed on 28th November 2023. The Respondents did not file any responses to the application. None of the respondents filed submissions despite the court's directions on 29th November 2023 that parties exchange submissions within 21 days from 29th November 2023. The applicant however filed submissions apparently wrongly dated 31/10/2023
2. The Motion seeks the following orders:
 - a. This honourable court be pleased to review and/or set aside its ruling delivered and dated 15th November 2023 and the consequential orders thereto pending the hearing and determination of this application and the main suit.
 - b. This honourable court do grant such or other relief as it may deem fit and necessary in the circumstances; and
 - c. Costs of this application be in the cause.
3. The grounds are as set out on the face of the Application and the supporting affidavit of Evelyn Otieno, counsel for the Applicant who deponed that the Plaintiff herein moved the court vide an Application dated 4th August 2023 during the court vacation and as at the time of filing, the main suit was scheduled for hearing on 2nd October 2023. That the application was certified urgent and it was directed that it be served upon the Respondents not later than 20th September 2023 which directions were duly complied



with. She stated that on 20th September 2023, the matter proceeded with all parties represented and the court made a determination where interim orders were not granted. She further deponed that a ruling was delivered on 15th November 2023 striking out the Plaintiff's application which ruling allegedly has an apparent error on the face of it.

4. The motion of 4/8/2023 was dismissed by this court simply for non-compliance with court orders, principally in that the applicant failed to file evidence of service of that application. This court, upon hearing the counsel for the respondents found that it could not proceed to determine the motion on its merits and dismissed the same. Now the applicant points out in the present motion that service had been effected earlier, and that even as at the 20/09/23 when the application was considered inter partes for the first time and interim orders denied, it had been served. The counsel points out that all the respondents save the 8th and 9th respondents were represented in court on that date. The deponent to the supporting affidavit avers that on 24th October 2023 when the matter was supposed to be heard the applicant's counsel logged into the virtual courtroom until the late hours of the afternoon and the matter was not attended to by the court for unexplained reasons. Further he states that the hearing date for 24/10/2023 had not been captured in the court data system. It is further averred that unbeknownst to him the matter had come up in court on 2/10/2023 and the application dated 4/8/2023 had been issued with the ruling date for 15/11/2023. He also states that the respondents filed and served a replying affidavit on 31/10/2023 in response to the application dated 4/8/2023, and upon being served the applicant filed submissions on 7/11/2023; nevertheless, the ruling delivered in respect of that application reflected that neither responses or submissions were filed. The applicant avers that the respondent may have misled the court that they had not been served with the application when the matter came up on 2/10/2023.
5. This court first sat in this station on 2/10/2023 and it would be unfortunate if it turns out that at that sitting some of the renowned practitioners in this town misled it to the effect that they had not been served with the application in issue, leading the court to order service a second time with the consequence of its dismissal for non-compliance therewith. Mr Marubu for the 8th and 9th defendants informed the court that the dismissed application was still pending, and it would come up for hearing on 24/10/2023 while Mr Angima for the 1st -7th defendants and Ms Lutta for the 10th defendant informed the court that they had not been served with the application.
6. All the foregoing notwithstanding, it is evident that this court's decision to issue directions on 2/10/2023 while the hearing of the application had been earlier set for 24/10/2023 disoriented the applicant who believed, whether rightly or wrongly so now – though on my part I think it was wrongly- it ceases to matter, that the hearing date 2/10/2023 set for the hearing of the main suit herein had been automatically vacated by the orders of Hon Justice Makori setting down the application dated 4/8/2023 for hearing on 24/10/2023. Nevertheless, that date of 2/10/2023 passed without any of the other parties insisting on a hearing of the suit.
7. Subject only to the deliberate exercise of inherent power of court under Section 3A of the [CPA](#) and the effectuation of the provisions of Section 1A in respect of the overriding objective of the [CPA](#) and [CPR](#), action taken at any stage in proceedings requires to be as per the purpose for which the matter was listed before the court so that litigants do not feel ambushed and to avoid much back and forth in terms of revisiting orders. This position is informed by insight that many procedural defects have on countless occasions on appeal reverted suits back to the trial court for a re-trial.
8. The matter came up listed as a hearing on 2nd October 2023 and this court may have considered that the applications that have stood in the way of the finalization of the matter required to be disposed of expeditiously and so it gave a raft of orders with that quick disposal in mind, but it appears that



some of the information given by some of the counsel present, on which it premised its raft of orders was incorrect. For that reason, the present application has merit and I allow it in terms of prayer no 1 thereof. The ruling dated 15/11/2023 is reviewed to the extent that the orders dismissing the application dated 4/8/2023 are hereby set aside

9. Further, as this court has now perused the entire record including the replying affidavits of Hellen Wambui Kimari dated 23/10/2023 the plaintiff's submissions filed on 7/11/2023, the 8th and 9th defendant's submissions filed on 10/11/2023, the effluxion of time as well as the provisions of section 1A and 3A of the [CPA](#), and the principles of *prima facie* case and irreparable loss and damage which in its view the application has satisfied, and also the balance of convenience, orders are hereby issued granting prayer no 3 to the extent that an interim injunction is issued restraining the defendants and/or their agents from interfering with the suit land comprised in Plot Number Kilifi Jimba /395 or the registered suit title therefor in any manner whatsoever pending the hearing of the main suit herein. The costs of both the application dated 4/8/2023 and of 24/11/2023 shall be in the cause.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 31ST DAY OF JANUARY 2024.

MWANGI NJOROGE

JUDGE, ELC MALINDI.

