



Molia v The Cabinet Sec. Min. of Lands & 2 others (Environment & Land Case 018 of 2021) [2024] KEELC 430 (KLR) (22 January 2024) (Ruling)

Neutral citation: [2024] KEELC 430 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE 018 OF 2021
PM NJOROGE, J
JANUARY 22, 2024**

BETWEEN

VERONICA LEWIS MOLIA PLAINTIFF

AND

THE CABINET SEC. MIN. OF LANDS 1ST DEFENDANT

COUNTY GOVERNMENT OF ISIOLO 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. This application is dated 4th August, 2023 and seeks prayers:
 1. That this Honourable Court be pleased to certify this application as urgent, service of the same be dispensed with and heard ex-parte in the first instance.
 2. That this Honourable Court be pleased to order stay of any pending, ongoing or further execution proceedings of the decree from the ex-parte judgment delivered on 10th July, 2023 in this matter pending hearing and determination of this application.
 3. That this Honourable Court be pleased to set aside the ex-parte hearing of 10th July, 2023 together with all other consequent proceedings leading to the ex-parte judgment and decree, and order fresh hearing of this suit.
 4. That this Honourable Court be pleased to grant leave to the 2nd defendant to defend this suit through filing amended, substituted witness statements and supplementary list of documents as may be necessary.
 5. That the costs of this application be in the cause.



2. The totality of the 2nd defendant's submissions amounts to a blame game that the 2nd defendant's advocate failed to come to court on the hearing day. The 2nd defendant does not deny that a hearing date had been fixed by the court. He however says that it has a credible defence and points out that the land in question is public land in which there are public facilities such as an Early Childhood Development (ECD) School and numerous government offices including some which touched on the security sector. It submits that public interest outweighs the plaintiff's individual interest which threatens the constitutional rights of children to access basic education.
3. The plaintiff's points out that the impugned judgment was properly issued as the defendants, without justifiable cause, had failed to attend the hearing fixed by the court despite demonstrated knowledge that they were aware of the hearing date.
4. I have considered the submissions proffered by the parties to buttress their assertions. I have also considered the authorities they have proffered to support their arguments. All the authorities cited by the parties are good authorities in their facts and circumstances. I however, opine that not all facts and circumstances are congruent to a degree of mathematical exactitude in their facts and circumstances. The facts and circumstances of this case raise what to me is an over-arching public interest touching on, inter alia, the constitutional right of children to access education. It is also not disputed that there are public funded buildings on the suit land.
5. I find it merited to invoke Order 12 Rule 7 of the [Civil Procedure Rules](#) which states as follows:

“Rule 12(7): Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”
6. I find that it is just to allow the application on the condition that the 2nd defendant files its amended defence, substituted witness statements and a supplementary list of documents within 14 days of the date of delivery of this ruling.
7. All parties are directed to come to court for fresh directions on 19/2/2024.
8. Costs shall be in the cause.

DELIVERED IN OPEN COURT AT ISIOLO THIS 22ND DAY OF JANUARY, 2024 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Miss Nyasani holding brief for Seth Isa for the 2nd Defendant/Applicant.

Kimathi present for the 1st and 3rd Defendants.

HON. JUSTICE P.M NJOROGE

JUDGE

