



REPUBLIC OF KENYA



**M’Irangi & 2 others v Maroo & 14 others (Environment & Land Miscellaneous
Case E007 of 2024) [2024] KEELC 1777 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1777 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND MISCELLANEOUS CASE E007 OF 2024**

CK NZILI, J

MARCH 20, 2024

BETWEEN

**NGOLUA M’IRANGI 1ST APPLICANT
KANATHI M’IRANGI 2ND APPLICANT
MARY KANATHI 3RD APPLICANT**

AND

**BONFACE ACIITA MAROO 1ST RESPONDENT
FRANCIS KUBAI M’MUCHIRI 2ND RESPONDENT
GEORGE KARITHI 3RD RESPONDENT
MOSES KALUA 4TH RESPONDENT
JACKSON KARWANDA 5TH RESPONDENT
GIDION KARITHI 6TH RESPONDENT
SILAS BUANTAI 7TH RESPONDENT
MARTHA KANINI M’ARANJU 8TH RESPONDENT
JOSEPH MUNGERIA 9TH RESPONDENT
CATHERINE NKATHA 10TH RESPONDENT
GRACE KATHAO 11TH RESPONDENT
JULANDA NKATHA 12TH RESPONDENT
LUCY NCABANI 13TH RESPONDENT
RUFUS PATRICK 14TH RESPONDENT
MUTIA PRISCILLA RWITO 15TH RESPONDENT**



RULING

1. The court is asked to review, set aside, stay, and or suspend the orders made on 29.1.2024, directing the court administrator Maua Law Court to visit the suit property as regards the occupation thereof, and for the O.C.S. Maua Police Station to offer security during the visit. The reasons are contained on the face of the application and in a supporting affidavit of Ngolua M'Irangi sworn on 30.1.2024. Briefly, the applicant avers the respondent's suit at the lower court seeks eviction orders against them, to which they have filed a statement of defense and a counterclaim that the respondent had colluded with the land officials to insert their parcel numbers on the applicant's land measuring 5.29 acres as per the adjudication booklet, but now reduced to 0.20 acres as per the official search.
2. It was averred that the respondents had sought for a county surveyor to visit the suit land, who could not solve the issue for he was going to rely on an erroneous map, which was a testament of fraud. The appellants aver the visit was aimed at implementing the fraud and helping the respondents to carry out eviction, destruction and occupation of their land by using some 200 gangs of goons that they had mobilized. Therefore, in the interest of justice, the court administrator, before anything else, should visit the suit land and prepare a report to ensure that no party interferes with the peaceful occupation and user of the suit property.
3. It is no dispute that the trial court issued an interparty order dated 16.10.2023 following an application dated 18.9.2023. The effect of the order was for the sub-county land surveyor to visit the parcels listed in the plaint and file a report on the occupation and the size of the suit parcels on the ground vis a vis what is in the respective title deeds. Parties were to share costs for the site visit. The order is yet to be executed. The applicants now seek its review, suspension, setting aside, a stay of its execution, a stay of the proceedings and a replacement with an order for the court administrator Maua Law Courts to accompany the land surveyor during the site visit with the assistance of the O.C.S. Maua Police Station.
4. From the pleadings attached to this application, there is no dispute that the subject parcels of land fall under the *Land Registration Act*. There is no indication if the applicants had expressed their reservations and fears before the trial court that if the scene visit was to take place without security, there would be a likelihood of the scene visit achieving undesired consequences than what the court directed on 16.9.2023. The order was made in the presence of the party's respective advocates.
5. There is no indication if the applicants sought the review of the orders above to include the security element and the availability of the requisite published survey maps. Additionally, the source of the alarming allegations of disruptions, chaos, intended eviction and taking up of vacant possession by the respondents was not disclosed to this court on top of any reports to the trial court and the relevant security agencies.
6. It is not enough to make alarming statements by way of affidavits without disclosing the source of the information. The order by the trial court, in my view, was made within its mandate under Sections 14-21 of the *Land Registration Act*, in furtherance of the overriding objective of the court on expeditious disposal of matters in a timely, proportionate, and cost-effective manner. It is the duty of the parties, as mandatorily stipulated under Sections 1A & 1B of the *Civil Procedure Act*, to help the court attain the overriding objective.
7. Stay of court proceedings is a grave matter that interferes with access to justice, fair hearing and the overriding objective alluded to above. It can only be exercised in exceptional circumstances and on sound grounds. A party making such an application has to do so at the earliest opportunity possible.



In *Global Tours & Travel Ltd* NRB. H.C Winding Case No. 43 of 2000, the court said some of the factors to consider would include the prima facie merits of the intended appeal, scarcity and optimum utilization of judicial time and whether the application was brought expeditiously.

8. The orders sought to be set aside, stayed, vacated, or reviewed was made on 16.9.2023. The applicant waited for close to five months to file this application. The delay has not been explained. There is no substantive appeal before this court. The trial court, as the first port of call, should be allowed to determine the issues now raised by way of miscellaneous application in this court. There is evidence before me that the applicant had also filed a similar application dated 30.1.2024 at the lower court, which is yet to be heard. The application herein is sub-judice and an abuse of the court process. See *Kenya Bakers Association v Kenya Revenue Authority* (2019) eKLR, *David Ndiu & others v Attorney General and others* (2021) eKLR.
9. It is as a result of this dismissed with no order as to costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 20th DAY OF MARCH, 2024

In presence of

C.A Kananu

Miss Asuma for Mutembei for the 1st & 2nd respondents

HON. C K NZILI

JUDGE

