



Ngonjo & 47 others v Maina & 3 others (Environment and Land Appeal E010 of 2023) [2024] KEELC 1482 (KLR) (12 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1482 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E010 OF 2023
LN MBUGUA, J
MARCH 12, 2024**

BETWEEN

STEPHEN MABURO NGONJO & 47 OTHERS APPELLANT

AND

PAUL IRUNGU MAINA 1ST RESPONDENT

FRANCIS MAKERIA WANJIRU 2ND RESPONDENT

SAMUEL KARIUKI MAINA 3RD RESPONDENT

NAIROBI CITY COUNTY 4TH RESPONDENT

RULING

1. The substantive appeal herein relates to the ruling and orders of Hon. S.A Opande (Principal Magistrate) issued on 15.8.2023 in CMCELC No E338 of 2022. The appellants have also filed a Notice of Motion application dated 23.11.2023 which is for determination before this court. They seek orders that the Respondents be restrained from sub-dividing, interfering, occupying, trespassing into, accessing forcefully in a manner likely to cause a breach of peace all those properties comprised within and identified as residential plots-Kayole Sector “A” within Nairobi County pending hearing and determination of this appeal.
2. They also seek orders that the OCS Soweto Police Station be directed to enforce the said orders and that there be a provision of costs.
3. I have considered the litigation history in this appeal which reveals that the Memorandum of Appeal was filed contemporaneously with an application dated 18.8.2023 seeking a stay of execution of the trial court’s ruling dated 15.8.2023. The court gave directions on the prosecution of the said application on 24.8.2023 but the application is still pending.



4. On 19.9.2023, the court gave directions relating to the filing of the Record of Appeal. The same has since been filed.
5. On 4.12.2023, the appellants informed the court they had filed another application, the one dated 23.11.2023, of which a Preliminary Objection was filed and is dated 30.11.2023.
6. It is noted that the appeal herein relates to interlocutory proceedings touching on an earlier application filed before the trial court on 27.9.2022.
7. In light of the foregoing analysis, I find that it is absolutely necessary to invoke Active Case Management Principles in this matter so as to steer the dispute to the right track. This entails a focus on the substantive rather than interlocutory issues.
8. In the case of *Lawrence Kinyua Mwai v Nyariginu Farmers Co Ltd & another* [2019] eKLR, while dealing with 18 or so applications and preliminary Objections at once, I stated as follows;

“Active Case management is also the effort by courts to handle cases in such a manner that they are resolved fairly and as promptly and economically as is reasonable in the circumstances of the case”.
9. Delivering a ruling in the application dated 23.11.2023 will still leave the application dated 18.8.2023 as well as the main appeal pending, not to mention that the suit before the lower court has now stalled because of the proceedings herein. Considering that the Record of Appeal has been filed, the court will proceed to hear the main appeal and the applications simultaneously, thus no ruling shall be delivered at this stage.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MARCH, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kuria for Appellant

Manyani for 1st – 4th Respondent

M/s Kipedi for the 4th Respondent

Court assistant: Judith

