



Lempaa v County Government of Kiambu & 2 others; National Environment Management Authority (Interested Party) (Environment & Land Petition E004 of 2024) [2025] KEELC 742 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEELC 742 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND PETITION E004 OF 2024
JA MOGENI, J
FEBRUARY 20, 2025**

BETWEEN

SUYIANKA LEMPAA PETITIONER

AND

COUNTY GOVERNMENT OF KIAMBU 1ST RESPONDENT

NGUGI PATRICK MWIBERI 2ND RESPONDENT

GRACE WANJIRU 3RD RESPONDENT

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY INTERESTED PARTY

RULING

1. For my determination is the Notice of Motion dated 19th June 2018 by the 2nd & 3rd Defendants/ Applicants seeking orders:-
 1. Spent
 2. That there be a stay of execution of the Orders issued by Hon. Lady Justice Grace Kemei on 28th October 2024 in terms of Prayers 3 and 4 of the Petitioner's Application dated 8th October 2024 pending the hearing and determination of this Application.
 3. That this Honourable Court be pleased to set aside the interim Orders issued on 28th October 2024 in terms of Prayers 3 and 4 of the Petitioner's Application dated 8th October 2024 and all consequential Orders resulting therefrom and this matter do proceed for hearing de novo.



4. That this Honourable Court be pleased to issue any further orders as it may deem just, fit and expedient to grant.
 5. That the costs of and incidental to this Application be provided for.
2. The motion is supported by the grounds on the face of it and the Supporting Affidavit of Elizabeth Kibathi and the grounds listed on the face of it inter alia:-
- i. That this matter came up before Hon. Lady Justice Grace Kemei on 28th October 2024 for interpartes hearing of the Petitioner's Application dated 8th October 2024.
 - ii. That on 28th October 2024, the 1st Respondent/Applicant sought an adjournment on the ground that they had not responded to the Petitioner's Application dated 8th October 2024 (the Petitioner's Application) and further sought leave of Court to put in a response to the Petitioner's Application.
 - iii. That on 28th October 2024, notwithstanding the submissions by the 1st Respondent/Applicant to the effect that they had not responded to the Petitioner's Application, the Petitioner went ahead to argue the merits of his Application to the detriment of the Applicant whose Counsel could not make representations from the Bar.
 - iv. That in the end, the Petitioner was granted prayer No.s 3 and 4 of his Application (the Orders) which were framed as follows:
 3. That by dint of Article 70(2)(a) & (b) of *the Constitution* the Honourable Court be pleased, pending the hearing and determination of this Application and/or Petition issue an order compelling the Respondents to facilitate access to the Petitioner's two parcels of land, the parcels of land known as Juja/Komo Block 21715 and Juja/Komo Block 21716 by putting culverts at the gates of the parcels to cover the trenches that they dug out on the easements.
 4. That pending the hearing and determination of this Application and/or Petition, the 1st, 2nd and 3rd Respondents be compelled to dig out and replace all the cabro blocks that they removed and covered with soil outside the gate of the Petitioner's compound on the parcels of Land known as Juja/Komo Block 21715 and Juja/Komo Block 2/716.
 - v. That the 1st Respondent/Applicant was condemned unheard and the resultant orders issued vide the Orders are not only prejudicial to the Applicant's interests (and by extension, the interests of the residents of Kiambu County) but also fly in the face of Article(s) 25(c) and 50(1) of *the Constitution* of Kenya, 2010.
 - vi. That the Orders are ambiguous in that they were issued pending the hearing and determination of the Petitioner's Application and/or Petition.
 - vii. That the Orders render the 1st Respondent/Applicant's response nugatory.
 - viii. That the Orders are incapable of being enforced because the placing of culverts outside the Petitioner's gate involves the use of public funds which need to be budgeted for and appropriated whereupon the procurement process follows once the budget is approved.
 - ix. That the Petitioner has outrightly admitted at grounds (d) and (e) of his Application dated 8th October 2024 that he had commenced developments, to wit, "placing cabro blocks and flower gardens" on a road reserve without the 1st Respondent/Applicant's permission contrary to section 57 of the *Physical and Land Use Planning Act*, No. 13 of 2019.



- x. That it would be quite unfair and unjust for the 1st Respondent/Applicant to be compelled to replace cabro blocks removed from a road reserve whilst carrying out its constitutional mandate as stipulated under the Fourth Schedule, Part 2 paragraph 5(a) of *the Constitution*.
 - xi. That the 1st Respondent/Applicant risks being cited for contempt of Court if they do not comply with the Orders.
 - xii. That if this Application is not heard in the first instance and on priority basis, grave injustice, prejudice and irreparable loss will be occasioned upon the Applicant.
3. The Application is opposed by the Petitioner. The 2nd and 3rd Respondents did not file any responses and neither did the Interested Party. Thus only the Petitioner filed a response and stated that it is an abuse of the Court process since the Applicants before the hearing of the Notice of Motion the Respondents were served and had a responsibility to file their responses and submissions. The Court issued these directions and the Petitioner filed their submissions on 25/10/2024. The Respondents did not file a response to the Notice of Motion Application dated 8/10/2024 despite having been served on 14/10/2024 two weeks before the hearing of the Notice of Motion which was slated and heard on 28/10/2024.
 4. That upon being asked by the Court why the Respondents had not filed their submissions the Counsels on record did not profer any reasons except they sought time which was granted for them to file responses. The Court granted the parties the time sought and also issued interim orders as sought by the Petitioner.
 5. The parties canvassed the Application by way of written submissions which I have considered.
 6. The Applicant deposes that the Respondents were not heard before the interlocutory orders were issued. My reading of the Court record does not support this averment. When the parties appeared in Court on 28/10/202, I note that the Counsel for the Interested Party simply stated that they had not complied despite having been served. The Counsel for the Respondent Ms Kibathi stated that they had not complied despite having been served with the Court orders dated 10/10/2024. Both the Respondent's and the Interested Party's Counsel sought 7 days to file their responses and this was granted.
 7. It is therefore not true for the Respondent's Counsel to state that the interim orders were issued without their participation. If anything the Court records shows that both Ms Kibathi for the Respondent and Karimi opposed the grant of interim orders.
 8. Given this information and the Court record, it therefore follows that asking this Court to set aside the interim orders and start de novo would be tantamount to this Court sitting on its own appeal. The Applicant seems to have wanted to file for review but did not bring this out in the Application. The grounds for review are clearly provided for under Order 45 Rule 1 and Section 80 of the *Civil Procedure Act*.
 9. I will not delve into the issue of review since the Applicant steered clear of it. In the case of Sameer Africa Ltd vs Aggrawal & Sons (2013)eKLR, the Court of Appeal, reiterated the well-established principles of setting aside interlocutory Judgment as were laid out in the case of Patel vs East Africa Cargo Handling Services Ltd (1974) E A 75 as per Duffus P. thus:

“The main concern of the Court is to do justice to the parties and the Court will not impose conditions on itself to fetter the wide discretion given to it by the rules. I agree that where it is a regular Judgement as is the case here the Court will not usually set aside the Judgement



unless it is satisfied that there is a defence on the merits. In this respect defence on merits, does not mean in my view, a defence that must succeed, it means as SHERIDAN J. Put it “a triable issue” that is an issue which raises a prima facie defence and which should go to trial for adjudication”

10. These principles have not changed and they are applicable to this instant Applicant. It is not in dispute that the Counsels for the Respondent and the Interested Party were both served and they attended Court as directed but failed to file their responses. Their. opposing grant of interim orders means that they were actually heard in Court. The grant of interim orders is a discretion of the Court and the fact that a party raises objection does not mean that they must have their way.
11. Consequently for the reasons given I do not find the Application dated 29/10/2024 merited and I dismiss it. The costs of this Application abide the outcome of the Petition dated 8/10/2024.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 20TH DAY OF FEBRUARY 2025 VIA MICROSOFT TEAMS.

MOGENI J

JUDGE

In the presence of:-

Kubo holding brief for Mr. Lempaa for the Petitioner

Ms. Kibathi for the 1st Respondent

Interested Party – Absent

Lillian - Court Assistant

