



**Kaplelach & 2 others (Suing for and on Behalf of Kimwatui Squatters) v  
Agricultural Development Corporation & 6 others (Environment & Land  
Petition E001 of 2023) [2024] KEELC 4765 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4765 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND PETITION E001 OF 2023  
MN MWANYALE, J  
JUNE 13, 2024**

**BETWEEN**

**MATHEW KAPLELACH ..... 1<sup>ST</sup> PETITIONER  
SAMUEL ROTICH ..... 2<sup>ND</sup> PETITIONER  
DANIEL ROTICH ..... 3<sup>RD</sup> PETITIONER  
SUING FOR AND ON BEHALF OF KIMWATUI SQUATTERS**

**AND**

**AGRICULTURAL DEVELOPMENT CORPORATION ..... 1<sup>ST</sup> RESPONDENT  
CABINET SECRETARY LAND ..... 2<sup>ND</sup> RESPONDENT  
NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT  
ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT  
COUNTY GOVERNMENT OF NANDI ..... 5<sup>TH</sup> RESPONDENT  
AARON ROTICH TUIKONG ..... 6<sup>TH</sup> RESPONDENT  
JARO FARM LIMITED ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. Before Court for determination is the Notice of Motion Application dated 8<sup>th</sup> May 2024 filed by the 6<sup>th</sup> and 7<sup>th</sup> Respondents in the Amended Petition dated 4<sup>th</sup> April 2024.
2. The 6<sup>th</sup> and 7<sup>th</sup> Respondents having been joined by way of the Amended Petition aforementioned were not party to the original petition dated 11/9/2023 that had been drawn and filed by a Mr. Mathew Kaplelach who described himself as the chairman of the Petitioner.



3. On 23<sup>rd</sup> October 2023, the firm of Korir Jepleting & Company Advocates now instructed by the Petitioners took over the conduct of the Petitioner and filed a Notice of Motion application on the same date, which sought prohibitory orders against the five Respondents as well as an order for leave to amend the petition.
4. The hearing of the application dated 23/10/2023 was slated for 29/01/2024 when the matter came up for directions on 4/12/2013. On 29/01/2024, the Petitioners Advocates were directed to serve the petition afresh on the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents; and to serve the application on all the Respondents b close of business that day, the Respondents were required to file their responses within 21 days from date of service and matter was slated for a mention on 20/2/2024 for compliance.
5. On 20/2/2024, some of the Respondents had not filed responses in respect of both the application and the petition and the application was scheduled for hearing on 19/3/2024.
6. When on the said date, there being no opposition to the application by all the Counsels for the Respondents, the Court allowed the Petitioners' application dated 23/10/2023 in terms that:-
  - i. The status quo obtaining on the ground and in the register shall be maintained pending hearing and determination of the petition.
  - ii. Leave was granted to the Petitioner to Amend their Petition within given timelines.
7. The application subject of this ruling was filed alongside a cross – Petition by the 6<sup>th</sup> and 7<sup>th</sup> Respondents, who had been joined in the Petition pursuant to the amendment to the petition.
8. The application primarily seeks;
  - i. Spent
  - ii. Conservatory order prohibiting the Petitioners/Respondents, agents. Assigns servants and any person/purchasers. Claiming under them be restrained from trespassing, ploughing, planting crops, felling trees and cutting bushes, burning vegetation, selling, disposing of or in any manner interfering with that parcel known as LR 21959/25 and L.R. 21959/23 Kimwanipending the hearing of the application inter partes.
  - iii. That there be a conservatory order prohibiting the Respondents, agents, assigns, servants and/ or any person/purchasers claiming under them be restrained from trespassing, ploughing, planting crops, felling trees and cutting, bushes burning vegetation, selling, disposing or in any manner interfering with that parcel known as L.R. No.21959/25 and L.R. No.21959/23 Kimwanipending the hearing of this petition.
  - iv. That the Petitioners. Agents, assigns, servants and/any person/purchasers claiming under them be ordered to forthwith remove themselves, servants, assigns, crops, livestock structures and any movable property from that parcel of land known as L.R. No.21959/25 and L.R. No.21959/23 Kimwani.
  - v. That there be an order of supervision of compliance with the orders (3 and 4) above by the OCPD Nandi Hills Police Station.
  - vi. That the orders of status quo issued on 19/3/2023 be vacated for breach of 19/3/2023 quo orders 19/3/2024 and the status quo and be reinstated, and the Petitioners forthwith vacated the suit lands



- vii. That the Petitioners more specifically the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Petitioners be cited for contempt and breach of Court orders issued on 19/3/2024.
  - viii. That the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Petitioners be ordered to supply a list of all the 650 squatters who ought to be subject of the jurisdictions of the Court for proper identity of the all parties to the petition.
  - ix. That there be an order for site visit by the Court to asses the extent of invasion and destruction of Applicants property on suit property
  - x. That leave be granted to the Applicant to commission a registered land valuer to asses and return the value of property destroyed by the Petitioners.
  - xi. That the costs of the application be provided for.
9. The grounds in support of the application were interalia that; -
- i. The Applicants are owners of the suit properties by virtue of purchase of the land from the 1<sup>st</sup> Respondent and (ADC) were not parties to the Petition as at 19/4/2024
  - ii. The Petitioners started invading the Applicants land on 20/4/2024 violently taking over huge swathes of land and started dividing the land among the mob of invaders
  - iii. The Petitioners had been clearing vegetation and causing massive destruction on the suit properties
  - iv. The police had tried stopping the invasion by the invaders kept on waving the order of status quo granted on 19/3/2024
  - v. The Petitioners were violent and repulsed the owners and their employees.
10. The application is further supported by the affidavit of Aaron Rotich Tuikong who has reiterated the grounds in support of the application and annexed photographs of destruction of the vegetation including setting up fires in preparation for planting.
11. That the parcels did not have squatters but squatters invaded the property after issuance of the status quo orders, and that the 1<sup>st</sup> Respondent (ADC) had sold to other hundreds of purchasers, and there was no justification why the Applicants property were singled out.
12. That the Court visits the site and assess the extent of damage and occupation by the Petitioners; and valuation of the damaged property.
13. The application having been certified as urgent and directions on interparty hearing issued was slated for interparty hearing on 23/5/2024 which had originally been scheduled as the date for compliance in respect of the main petition.
14. The Petitioner/Respondents Advocate confirmed having filed a replying affidavit dated 15/5/2024 and confirmed being served with a further affidavit dated 21/5/2024 and was ready to proceed.
15. The other Advocates for the Respondents in the application and Petition did not wish to take part in this application, hence the application shall proceed as between the 6<sup>th</sup> and 7<sup>th</sup> Respondents/cross – Petitioners as Applicants and Petitioners as Respondents.
16. The Court directed service of the application to the 3<sup>rd</sup> Respondents who indicated through Ms. Obino Learned Counsel that they had not been served and there being no affidavit of service, the Court could not confirm service, the 3<sup>rd</sup> Respondent were directed to file their responses by Monday the 27<sup>th</sup> May



2024 and Applicant was to file submissions by 28/5/2024 and the Petitioner/Respondent to file their submissions by 30<sup>th</sup> May 2024 and Ruling reserved to today 13/6/2024 in view of the urgency of the application.

17. As noted above the application is mainly between the Cross-Petitioners as Applicants and the Petitioners as Respondents as the 3<sup>rd</sup> Respondent neither filed a response to the application and submissions in the matter.

**Respondent's Case:**

18. In the Replying Affidavit deponed by Mathew Kaplelach deposes that;-
- i. The Applicant despite being the owner of the suit parcels had never been in possession and occupation of the same.
  - ii. That L.R. No. 219529/23 Kimwani was not 45 acres but was 32 acres
  - iii. That the squatters had been in occupation of the suit parcels and the Applicant had been using police to evict them
  - iv. That the L.R No. 21959/23 measured only 37 acres while L.R. NO. 21959/25 measured only 80 acres
  - v. That the squatters were occupying a hilly and scrub area and there is no meaningful development in the area and the photographs by the Applicant were meant to mislead the Court.
  - vi. That the squatters have been in occupation of three portions namely L.R. No. 21959/25. L.R 1472/8 and L.R. No. 219159/23 all in Kimwani for the past twenty years.
  - vii. That the 6<sup>th</sup> and 7<sup>th</sup> Applicants were seeking substantive orders, in an interlocutory application so as to evict the Respondents out of these parcels.
  - viii. That the 6<sup>th</sup> and 7<sup>th</sup> Applicants occupy on the west side while the Respondents occupy on the East side.
  - ix. That the status quo orders issued did not confer any rights for invasion and it also did not confer ownership of the disputed parcels of land.
19. On the strength of the deposition, the Respondents sought the dismissal of the application.

**Applicant's Submission:**

20. The Applicants submit that they were not parties to the petition when the orders of status quo were issued, and have framed and submitted on a whopping 12 issues which can be summarized as follows: -
- i. That under Order 40 Rule 7, and Order of injunction may be discharged, varied or set aside; on any application made by a dissatisfied party.
  - ii. That the Applicants are dissatisfied with the orders that were wrongly applied this prejudicing their proprietary interests and they were not heard on their application.
  - iii. The Applicants took possession to the suit properties more than 25 years ago and planted sugarcane on it



- iv. That the status quo orders were wrongly used by the Petitioner to invade the suit property. The orders were issued in respect of 21959(FR 319/45) while the Respondents invaded LR No. 21959/23 and L.R. 21959/25.
21. The Applicants submit that the Respondents are in contempt of the Court orders and urge the Court to punish them.
22. The Applicants place reliance on the decision in *Bia Tosha vs Kenya Breweries Limited* on the proposition that breach of status quo orders amounted to contempt of Court.

**Respondent's Submission:**

23. The Respondents submit that they have been in actual use, possession and occupation of the suit land parcels no. L.R. No. 21959/25, L.R. 21959/23 and L.R. No. 1472/8 Kimwani for over 20 years.
24. The Respondent submits that the prayers sought in the application are substantive in nature and cannot issue at an interlocutory state.
25. The Respondent have framed 2 issues for determination, to wit whether the application is merited and who should bear the costs of the application.
26. The Respondent submit that the conservatory orders sought by the Applicants are not available to them since the nature of conservatory orders is that they would issue against public agencies, unlike interlocutory injunctions which would issue against private -party and in this regard the Respondents has cited the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, as well as *Nairobi Civil Appeal No. 151/2011 Invesco Assurance Company Limited v M. W.* [2016].
27. In the decision of the Board of Management of Uhuru Secondary School v City Council Director of Education & 2 others. The principles for grant of conservatory orders were laid as follows; -
  - i. Need for the Applicant to demonstrate an arguable prima facie case with a like hood of success, and to show that in the absence of the conservatory orders he is likely to suffer prejudice.
  - ii. The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bills of Rights.
  - iii. Thirdly, the Court should consider whether if an interim conservatory order is not granted the petition or its substratum will be rendered nugatory
  - iv. whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.
28. The Respondents submits that the Applicant has not demonstrated how they were registered as proprietors of land parcels numbers L.R. No. 21959/25, L.R. No. 21959/23 and L.R. No. 1472/8 and that the Applicant are not in occupation of the suit parcels.
29. The Respondent submits that there is no constitutional value to be achieved if conservatory orders are granted at this juncture.
30. The Respondents submits further that the Applicants are not in occupation although they are the registered owners; and urges the Court to dismiss the application.
31. It is common ground between the Cross Petitioners/applicants and the Petitioners/Respondents that;



- i. The Cross – Petitioners are the registered owners of L.R. No. 21959/25 and L.R. No. 21959/23; Kimwani, this fact having been acceded to by the Petitioners/Respondents in their Amended Petition at paragraph 8 and 9 thereof.
- ii. That the orders of status quo issued on 19/3/2024 were issued on the basis of the original petition and the application dated 23/10/2023 to which the Cross – Petitioners/Applicants were not parties to and related to Kimwani ADC L.R. No. 21959(FR No. 319/45) issue
- iii. That in the Original Petition only 176 people were stated to be squatters and not 650 as appearing on the title of the petition.

**Issues For Determination:**

32. Having analyzed the application the affidavits, and the submissions the Court frames the following as issues for determination.
  - i. Whether the application is merited
  - ii. What reliefs ought to issue?
  - iii. Who bears the costs of this application?

**Analysis And Determination:**

33. The Court observes that some of the prayers sought in the application subject of this ruling are also sought in the Cross – Petition and should the Application succeed; granting the said prayers at the interlocutory stage would have the effect of determining the cross – appeal before hearing and determination of the amended petition on its merit.
34. The Applicants has however demonstrated that the orders of status quo issued on 19/3/2024 were abused and used to invade their properties L.R. No. 21959/25 and L.R. No. 21959/23 yet the aid status quo orders as sought in the application dated 23/10/2023 and the original Petition were issued in respect of L.R. No. 21959 (F.R. No. 319/45) and certainly were not meant to facilitate an invasion and/or occupation of L.R. No. 21959/25 and L.R. No. 21959/23. Generally status quo orders are meant to preserve a state of affairs and not meant to facilitate an invasion on another’s property.
35. The Applicants have demonstrated to be the lawful owners on L.R. No. 21959/25 and L.R. NO. 21959/23 and the Respondents having concede to ownership by the Applicants of the suit property.
36. The status quo orders issued on 19/3/2024 were meant to issued in respect of L.R. No. 21959 (F.R. No. 319/45) as per the original petition and the application dated 23/10/2023, and certainly the status quo orders were not meant to assist the Petitioners invade and/or occupy L.R No. 21959/25 and L.R. No. 21959/23 which the Respondents themselves have conceded belongs to the Cross – Petitioners/ Applicants.
37. The Cross – Petitioners Applicants have demonstrated to be lawful owners on L.R. No. 21959/25 and L.R. No. 21959/23 and the entry on the suit properties by the Petitioners was thus in contempt of the status quo orders.
38. The result is that the application therefore merited more so that the status quo orders issued affected a nonparty to the original petition who did not have a chance to respond to the same, and who was greatly affected by the status quo orders so issued. Paragraphs 12 -15 of the Replying affidavit of Mathew Kaplelach being scandalous offends the provisions of Order 19 Rule 6 of the Civil Procedure Rules and the deposition therein are hereby expunged.



39. On issue 1, the Court finds that the application is merited, the Applicant having demonstrated proprietary interest over L.R. 21959/23 and L.R. No. 21959/25 Kimwani, which the Respondents themselves concede. And the fact that the Respondents had in their original petition indicated that there were on L.R. No. 21959 (F.R. No. 319/45) the Court finds that the application is thus merited.
40. Thus, in answer to issue 1, the Application is merited and the Court shall now consider what reliefs sought to issue.
41. As noted elsewhere some of the reliefs sought cannot be granted in an interlocutory stage as they have the potential of disposing of the whole petition the Court therefore in issuing the reliefs has this at the back of its mind.
42. This position was stated by the Court in the decision in the case of East African Portland Cement Company Limited v Attorney General & Another [2013] eKLR as quoted in the decision in the case of John Harun Mwau v Linus Gitahi & 13 others [2016]eKLR.
43. Having found the application to be merited and that the status quo order issued on 19/3/2024 were abused and used to invade L.R. NO. 21959/23 and L.R. NO. 21959/23, and in line with the decision in Bia Tosha vs Kenya Breweries Limited as submitted by the Applicants, that breach of the status quo amounted to a contempt of Court, the Court will firstly handle the said reliefs sought in relation to the said contempt.
44. Thus, the application is allowed in term as follows;
- i. The Petitioners/Respondent shall file a list of all the 650 squatters they represent in this matter noting only 176 squatters name were filed alongside the original petition. The 650 squatters' names shall be accompanied by their national identity card numbers; and the same shall be filed within 30 days from the date hereof.
  - ii. The status quo orders issued on 19/3/2024 are hereby set aside entirely.
  - iii. The Petitioners/Respondents having gained entry and access on L.R. No. 21959/25 and L.R. No. 21959/23 Kimwani of the status quo orders which related to L.R. 21959 (F.R. NO. 319/45) and thus in contempt of the said orders shall purge the said contempt by removing any structures and their livestock, that they had erected from 19/3/2024 onwards from L.R. No. 21959/25 and L.R. No. 21959/23 Kimwani within 30 days from today, failure to which Applicant shall move the Court for their removal and their Petition shall not be heard.
  - iv. Upon purging of the contempt in terms of prayer (iii) above the Petitioners are hereby prohibited by themselves, agents, assigns, servants, and/or any person/purchasers claiming under them from trespassing ploughing planting crops, felling trees and cutting bushes, burning vegetation selling, disposing or in any manner interfering with that parcel known as L.R. No. 21959/25 and L.R. No. 21959/23 Kimwani pending the hearing and determination of this petition and cross petition.
  - v. Costs of the application in the cause.

**RULING, DELIVERED AND DATED THIS 13TH DAY OF JUNE, 2024.**

**HON. M. N. MWANYALE,**

**JUDGE**

**In the presence of;**



- 1. Mr. Mwetich for the Cross Petitioners/Applicant**
- 2. Mr. Korir for the Petitioners/Respondents**
- 3. Mr. Kwame for the Respondent**
- 4. Ms. Obino for the Respondents**

