



REPUBLIC OF KENYA



Ochieng v Munda & 2 others (Environment and Land Miscellaneous Application E001 of 2023) [2024] KEELC 5403 (KLR) (18 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5403 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2023
GMA ONGONDO, J
JULY 18, 2024**

BETWEEN

OTIENO BOLIVERS OCHIENG APPELLANT

AND

ABEL APIYO MUNDA 1ST RESPONDENT

SAMWEL ONYANGO OKEYO 2ND RESPONDENT

GODWIN ODOYO T/A KARIERO PROPERTIES 3RD RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 10th November 2023 by the Appellant/Applicant through H. Obach and Partners Advocates for following orders ;-
 - i. That this Honourable court be pleased to grant stay execution of the decree from the Ruling of Justice Mohamed N. Kullow delivered on the 23rd day of October 2023 pending the interpartes hearing and determination of this application.
 - ii. That this Honourable court be pleased to review the ruling delivered on the 23rd day of October 2023.
 - iii. That the costs of this Application be provided for.
2. The respondents through Odondi Awino and Company Advocates, opposed the application by way of Replying Affidavit sworn on 23/7/2024.
3. The court directed that the application be heard by written submissions as disclosed in the proceedings of 15/1/2023 and 6/12/2023 herein.
4. Notably, the applicant's counsel failed to comply with the orders of 15/1/2023 and 6/12/2023.



5. Ms. Agade instructed by Odondi Awino learned counsel for the respondent has affirmed the applicant's failure and urged the court to dismiss the application with costs.
6. Indeed, the applicant's counsel was notified of the existence of this date as discerned in the notice issued by the Deputy Registrar of this court. There is no reason for noncompliance with the orders and nonattendance in court on the part of the applicant.
7. Clearly, the applicant was afforded a fair opportunity to be heard on the application as held in *James Kanyiite Nderitu v Marios Philotas Ghukas and another* (2016) eKLR and Articles 48 and 50 (1) of the *Constitution* of Kenya 2010.
8. Nonetheless, the applicant's counsel failed to urge the application as directed by the court.
9. In the foregone, the application is inept and fails. The same is hereby struck out with costs to the 1st respondent.
10. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MIGORI THIS 18TH DAY OF JULY, 2024.

G.M.A. ONGONDO

JUDGE

In presence of: -

Ms. Agade instructed by learned counsel Mr. Odondi Owino

for 1st Respondent

Court Assistant – Tom Maurice

