



Washumbu (Directed Agricultural) Company Limited v Officer Commanding Police Station (OCS) Kasigau (Environment and Land Miscellaneous Application E001 of 2024) [2024] KEELC 5850 (KLR) (Environment and Land) (26 August 2024) (Ruling)

Neutral citation: [2024] KEELC 5850 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2024
EK WABWOTO, J
AUGUST 26, 2024**

BETWEEN

THE WASHUMBU (DIRECTED AGRICULTURAL) COMPANY LIMITED APPLICANT

AND

THE OFFICER COMMANDING POLICE STATION (OCS) KASIGAU RESPONDENT

RULING

1. This ruling relates to the application commenced by the Applicant by way of a miscellaneous application dated 7th August 2024. The application sought the following prayers: -
 - a. ...
 - b. That summons be issued to the OCS Kasigau Police Station to appear before this court for the purposes of rendering an account on the presence of his police officer on the Applicant's land LR No. 14206 Taita.
 - c. That the Respondent be directed to allow unlimited access to LR No. 14206 Taita by the Applicant.
 - d. That the court be allowed to issue such other or further relief that the court may deem just and expedient to grant.
 - e. That the costs of this application be borne by the Respondent.



2. The application was premised on the grounds appearing on its face and was supported by the Affidavit sworn by Jimmy Mwamidi on 7th August, 2024 in support to the application.
3. Having carefully considered the instant application and the affidavit in support together with the annexures thereto, it is evident that the application seeks inter alia for the enforcement of the interim orders issued on 5th July 2023 by this court differently constituted in respect to Voi Elcep Pet No. 1 Of 2024 (formerly Msa ELC No. E005 Of 2023 The *Washumbu (directed Agricultural) Company Limited vs Joseph Kamau Mbiriri & Others*. The court in issuing the said orders granted conservatory orders restraining Joseph Kamau Mbiriri from conducting mining activities on the suit property pending the hearing and determination of the said petition. Voi ELCEP PET NO. 1 OF 2024 is still pending before this court and no reasons have been given as to why the instant application was not filed in the pending suit.
4. The Applicant in seeking the enforcement of the said orders has proceeded to file the instant miscellaneous application wherein Joseph Kamau Mbiriri is not a party to the instant application. An application seeking to enforce existing orders in a pending suit can only be filed in the said suit and not through a separate miscellaneous application.
5. In view of the foregoing, the application before court is not competent, the same amounts to an abuse of the court process. This court finds that the said application is misconceived. The application, therefore, lacks any legal leg to stand on and suffers a false start. The prayers sought cannot be granted and the said application is for rejection.
6. Having said so and drawing from the foregoing, this court hereby issues the following orders: -
 - a. The application dated 7th August 2024 is hereby struck out.
 - b. There shall be no orders as to costs.
 - c. The file is closed.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT VOI THIS 26TH DAY OF AUGUST 2024.

E.K. WABWOTO

JUDGE

