



REPUBLIC OF KENYA



**Saiyoi v Letina & 4 others (Environment & Land Petition 23 of 2017)  
[2024] KEELC 6309 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6309 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND PETITION 23 OF 2017  
CG MBOGO, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**KAIKANAE OLE SAIYOI ..... PETITIONER**

**AND**

**JANE KAARIE LETINA ..... 1<sup>ST</sup> RESPONDENT**

**PARMOIS OLE NGOTIEK ..... 2<sup>ND</sup> RESPONDENT**

**SEKEYIAN NGOTIEK ..... 3<sup>RD</sup> RESPONDENT**

**LAND REGISTRAR, NAROK COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. Before the court is the notice of motion dated 30<sup>th</sup> April, 2024 filed by the petitioner/ applicant herein, and it is expressed to be brought under Sections 1A,3, 3A, 63 (e) and 95 of the *Civil Procedure Act*, Order 8 Rule 5 (1) of the Civil Procedure Rules, and Article 50 of *the Constitution* seeking the following orders: -
  1. Spent.
  2. That this honourable court be pleased to grant leave to the applicant to file reply to answer to petition in this case out of time.
  3. That the annexed draft reply to answer to petition be deemed as duly filed upon payment of court fees.
  4. That the costs of this application be provided for.
  5. Any other or further relief(s) that this honourable court may deem fit and just to grant.



2. The application is premised on the grounds on the face of the application. The application is supported by the affidavit of the petitioner/ applicant sworn on even date. The petitioner/ applicant deposed that his advocates on record were served with an amended answer to petition dated 11<sup>th</sup> May, 2023 but they inevitably forgot to file a reply to the answer to the petition. He further deposed that prior to the hearing of this matter and upon consultation with his advocates, it became apparent that there is need to seek leave to file a reply to the amended answer to petition. Further, he deposed that it is necessary to enable this court effectually and completely adjudicate and settle all the questions in dispute. He deposed that no prejudice or injustice will be caused to the respondents as the same has been made in good faith and without delay.
3. In response thereto, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed a notice of preliminary objection dated 23<sup>rd</sup> July, 2024 seeking to strike out the application on the grounds that: -
  1. That the application offends Order 3 Rule 2 of the Civil Procedure Rules, 2010.
  2. That the application offends Order 11 Rule 3 of the Civil Procedure Rules, 2010.
  3. That the application dated 30<sup>th</sup> April, 2024 be dismissed with costs.
4. The application was canvassed by way of written submissions. The petitioner/ applicant filed his written submissions dated 7<sup>th</sup> August, 2024. The petitioner/ applicant submitted that he ought to be availed an opportunity to answer a conflicting claim of adverse possession as raised in the amended answer to petition, in order for the court to be properly equipped to determine fully and finally the dispute between the parties. The petitioner/ applicant urged this court to exercise its inherent powers as provided for under Sections 1A, 3A and 63 (e) of the *Civil Procedure Act*.
5. The petitioner/ applicant further submitted that pursuant to Order 8 Rule 5 (1) of the Civil Procedure Rules, it is now an accepted norm that a party should be held to their pleadings, and unless he pleads rebuttal to the claim on adverse possession, he shall not be able to prove that the claim by the 1<sup>st</sup> to 3<sup>rd</sup> respondents is baseless. To buttress on this submission, the petitioner/ applicant relied on the case of *Muchiri versus Boresha Maisha Self Help Group (Civil Appeal 48 of 2022)* [2024] KEHC 2488 (KLR) (11 March 2024)(Judgment).
6. The petitioner/ applicant further submitted that if the claim on adverse possession by the 1<sup>st</sup> to 3<sup>rd</sup> respondents is abandoned and not heard by the court, it would mean that the dispute between the parties is not settled with finality.
7. The 1<sup>st</sup> to 3<sup>rd</sup> respondents filed their written submissions dated 15<sup>th</sup> August, 2024 where they raised three issues for determination as listed below: -
  1. Whether the preliminary objection raised is sustainable.
  2. Whether the said preliminary objection has merit and should be upheld.
  3. Who bears the costs of this application?
8. On all these issues, the 1<sup>st</sup> to 3<sup>rd</sup> respondents submitted that the preliminary objection fits the qualifications set in *Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors (1969) EA 696*. Secondly, they submitted that guided by the provisions of Order 3 Rule 2 and Order 11 Rule 3 of the Civil Procedure Rules, the petitioner/ applicant was to file his reply to the answer to the petition before close of pleadings as well as prior to the taking of a hearing date. They submitted that the reply was done on 30<sup>th</sup> April, 2024 after the matter had been set for hearing, the petitioner's/ applicant's case heard and closed and at the tail end of the respondents' case.



9. In conclusion, the 1<sup>st</sup> to 3<sup>rd</sup> respondents submitted that the court cannot grant the reliefs sought in the application as it barred by law and as such, the application ought to be dismissed with costs.
10. I have considered the application, the notice of preliminary objection, and the written submissions filed by the respective parties. In my view, the issue for determination is whether this court ought or can grant the petitioner/ applicant leave to file his reply to the answer to the petition dated 30<sup>th</sup> April, 2024.
11. I have perused the record in this file. The petitioner/ applicant filed an undated amended petition in court on 4<sup>th</sup> October, 2019. The amended petition is brought under Article 22 of *the Constitution* seeking enforcement of the petitioner's/ applicant's constitutional rights enshrined under Articles 40 and 50 (1) of *the Constitution*. It therefore follows, that the practice and procedure in dealing with the instant petition ought to be guided by *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 also known as "The Mutunga Rules".
12. Instead, the petitioner/ applicant and the 1<sup>st</sup> to 3<sup>rd</sup> respondents have sought to ventilate the arising issues under the Civil Procedure Rules. I would strongly urge the learned counsel for the respective parties to acquaint themselves with the Mutunga Rules.
13. Rule 19 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, provides that, "A formal application under these rules shall be by Notice of Motion set out in Form D in the Schedule and may be supported by an affidavit."
14. Rule 21 (2) provides that, "A party who wishes to file further information at any stage of the proceedings may do so with the leave of the Court."
15. Back to the proceedings of this court, on 30<sup>th</sup> April, 2024 and while the matter was coming for mention, Mr. Kiprono, the learned counsel for the petitioner/ applicant through an oral application sought the leave of the court to file a reply to the amended answer to the petition. He sought 10 days to do so. Ms. Kudate, the learned counsel for the 1<sup>st</sup> to 3<sup>rd</sup> respondents, opposed the said oral application on the grounds that the petitioner/ applicant had closed his case and the respondents' case was at its tail end. This court upon considering the arguments by the parties, declined to grant the requests made by the learned counsel for the petitioner/ applicant. The 1<sup>st</sup> to 3<sup>rd</sup> respondents' case was fixed for further defence hearing on 29<sup>th</sup> May, 2024. As it is, the decision of this court refusing to grant the petitioner/ applicant leave to file any other document remains in force. It therefore defeats logic for the petitioner/ applicant to file the instant application as it is similar to the oral application he made in court on the same date.
16. Having said the above, and noting the glaring error in the form of the application before the court, I decline to grant the orders sought in the notice of motion dated 30<sup>th</sup> April, 2024. The same is hereby struck out. The notice of preliminary objection dated 23<sup>rd</sup> July, 2024 is struck out. Each party to bear its own costs. Further mention on 9<sup>th</sup> October, 2024 for further directions. Orders accordingly.

**DATED, SIGNED & DELIVERED VIA EMAIL this 30<sup>TH</sup> day of SEPTEMBER, 2024.**

**HON. MBOGO C.G.**

**JUDGE**

**30/09/2024.**

In the presence of: -

Mr. Meyoki – C.A

