



Muriu v Archdiocese of Nyeri (Environment and Land Miscellaneous Application 14 of 2019) [2025] KEELC 174 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 174 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 14 OF 2019
JO OLOLA, J
JANUARY 30, 2025

BETWEEN

ZACHARY MWANGI MURIU APPLICANT

AND

ARCHDIOCESE OF NYERI RESPONDENT

RULING

1. By a Notice of Motion dated 13th July, 2023, Zachary Mwangi Muriu (the Applicant) prays for the following:
 - a. That this Honorable Court be pleased to stay the orders issued by the Honorable in Nyahururu Court (sic) on the 17th December, 2019 pending the hearing and determination of Nyeri ELC. Misc. 8 of 2019
 - b. That this Honorable Court be pleased to restrain the Applicant Archdiocese of Nyeri and its agents from planting tea and coffee bushes and constructing dams and other activities contrary to conservatory orders issued on 5th November, 2014 in Nyeri HC Petition No. 205 of 2014; and
 - c. That the costs of this application be provided for.
2. The Application is supported by an affidavit sworn by the Applicant wherein he depones that on 17th December, 2019, this Honorable Court issued stay orders in Nyeri CMELC Case No. 8 of 2019 pending the hearing and determination of Nyeri ELC Petition No. 205 of 2014 and Nyeri ELC. No. 119 of 2013 (OS). The Applicant further depones that the Respondent has not bothered to prosecute the said Petitions for a period of three years and that it is constructing dams, planting coffee and tea bushes on the disputed premises contrary to the conservatory orders issued by this court.



3. It is the Applicant's case that it is only just that the order issued on 17th December, 2019 be vacated and that consequently, he be allowed to prosecute his case in Nyeri CMELC Case No. 8 of 2019
4. The Archdiocese of Nyeri (the Respondent) is opposed to the application. In a Replying Affidavit sworn on its behalf by its Advocate on record John N. Mugambi, the Respondent avers that the application before the court is highly misconceived, incompetent, lacking in merit and that the same is an abuse of the court process.
5. It is the Respondent's case that both Nyeri ELC. Petition No. 205 of 2014 and ELC. Case No. 119 of 2013 are still before the court and that the same have not been conclusively heard and determined. The Respondent asserts that were it not for its zealous action in prosecuting the matters, Nyeri ELC. Petition No. 205 of 2014 would not have been listed for hearing on 19th December, 2023.
6. I have carefully perused the application before the court as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Applicant acting in person as well as Mr. Mugambi, Learned Counsel for the Respondent.
7. By this Miscellaneous application before me, the Applicant urges the court to stay the orders issued by this court sitting at Nyahururu on 17th December, 2019 pending the hearing and determination of Nyeri ELC. No. 8 of 2019. In addition, the Applicant urges the court to be pleased to restrain the Respondent, its agents and/or servants from carrying on various activities on the disputed parcels of land. It is the Applicant's case that those activities run contrary to conservatory orders that were issued on 5th November, 2014 in Nyeri High Court Petition No. 205 of 2014.
8. It is the Applicant's position that on 17th December, 2019, this court sitting in Nyahururu issued orders in Nyeri ELC. Petition No. 205 of 2014 which orders stayed proceedings in Nyeri CMELC case No. 8 of 2019. It is the Applicant's case that since those orders were issued, the Respondent has not bothered to prosecute the two Petitions it had filed and hence his plea that the stay orders be lifted.
9. On its part, the Respondent denies that it has failed to prosecute the said Petitions. It further denies having carried out any cultivation and/or construction activities on the disputed parcels of land known as Kamwenja and Mathari Farms.
10. From the material placed before the court, it was not in dispute that on 17th December, 2019, the Honorable Lady Justice M.C. Oundo sitting at Nyahururu issued orders herein as follows:
 2. That Nyeri Court Magistrate's Court ELC. No. 8 of 2019 be and is hereby stayed pending the determination of Nyeri Petition No. 205 of 2014 and ELC. No. 119 of 2013;
 3. That parties shall pursue the determination of Nyeri Petition No. 205 of 2014 and ELC. No. 119 of 2013 to their finalization at the earliest; and
 4. That the costs (be awarded to the Applicant).
11. From a perusal of the Ruling delivered by the Learned Judge on the said 17th day of December, 2019, it was evident that the same arose from an application made by the present Respondent who sought to stay the said proceedings filed by the present Applicant in the Lower Court on account that the same issues raised in the Lower Court were substantially similar to those that had been raised by the present Respondent in the 2013 suit and in the Petition filed in 2014.
12. As I understood him, the Applicant does not deny that the suit he filed in the Lower Court in the year 2019 was substantially similar to what the Respondent had filed earlier in 2013 and 2014. It was his case that more than three years since the Respondent had obtained the orders, the Respondent had failed



to prosecute the cases and was instead using them for cultivation and construction of dams which, again according to the Applicant, went against conservatory orders that had been issued in Nyeri ELC. Petition No. 205 of 2014.

13. As it were, a perusal of the orders issued on 17th December, 2019 required the parties to pursue the determination of the two suits filed before this court at the very earliest. While the Applicant blames the Respondent for failure to prosecute the matters, it was clear to me from a perusal of the said orders that the order to have the suit and the Petition determined at the earliest was directed at both parties.
14. In his application before the Court the Applicant has not demonstrated that he took any action on his part to fix the two matters for hearing and/or to have the same dismissed for want of prosecution. On its part, the Respondent has demonstrated that as at the time this application came up for hearing, Nyeri ELC. Petition No. 205 of 2014 had been set up for further hearing on 19th December, 2023. That being the case, it was apparent that the Respondent had not been indolent in the prosecution of the said matters as purported by the Applicant.
15. In regard to the Prayer for injunction to restrain the Respondent from carrying on certain activities on the land on the basis that the same went against orders earlier on issued by the court, it was apparent from the material placed before the court that on 5th November, 2014, the High Court had issued orders in Nyeri ELC. Petition No. 205 of 2014 as follows:
 - “2. a Conservatory Order is issued restraining the Respondent by themselves, their agents, servants, workers, from leasing, selling and/or dealing in any manner with all those plots of land Known as 1356, 4166, 4167, 9463 and 9464 Nyeri pending the hearing and determination of the application.”
16. I was again unable to see how the Respondent could be said to have violated the said orders. Those orders were clearly issued in favour of the Respondent as against the Applicant who was the Respondent in the application for conservatory orders. In any event, if there were orders restraining the Respondent from carrying out any activities on the land, it was not clear to me why the Applicant in this Miscellaneous application had not sought contempt of court proceedings in the relevant Petition to have the Respondents punished therefor.
17. It follows that I did not find any merit in the Motion dated 13th July, 2023. In the premises, I hereby dismiss the same with costs to the Respondents

RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS SIGNED AND DATED AT MOMBASA THIS...30TH DAY OF JANUARY 2025.

J.O. OLOLA

JUDGE

Ruling delivered in the presence of:

- a. Firdaus the Court Assistant.
- b. No appearance by the Advocate for the Applicants
- c. Ms. Nerima holding brief for Mugambi Advocate for the Respondents

