



**Youth v Ringera (Environment & Land Miscellaneous Case  
E128 of 2021) [2024] KEELC 6047 (KLR) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6047 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE E128 OF 2021**

**AA OMOLLO, J**

**SEPTEMBER 19, 2024**

**BETWEEN**

**MUUNGANO YOUTH ..... APPLICANT**

**AND**

**JULIUS K M RINGERA ..... RESPONDENT**

**RULING**

1. Muungano Youth who are Applicants herein filed the Notice of Motion application dated 22<sup>nd</sup> March, 2024. In it they seek orders;
  - a. Spent
  - b. That this Honourable Court be pleased to set aside the eviction orders issued by this Honourable Court on the 4<sup>th</sup> day of May, 2023.
  - c. That the same be vacated and an order of temporary injunction restraining the respondent herein whether by themselves, servants' employees, or anybody claiming under them or in their name from Evicting, trespassing into property herein known as LR 209/10898/20 pending the hearing and determination of this Application.
  - d. That this Honourable Court be pleased to issue an order of temporary injunction restraining the Respondents herein whether by themselves, servants, employees, or anybody claiming under them or in their name from Evicting, trespassing into in any manner interfering with plaintiff/Applicant's ownership over all those parcels of land known as Land Reference LR 209/10898/20 pending the hearing and determination of this suit.
  - e. That an order of mandatory injunction to issues compelling the applicant herein to stop by any means using the OCS Villa Police station to harass/evicting the applicant pending the hearing and the determination of this application.



- f. That this Honourable Court be pleased to grant such further orders as it shall deem fit and just in the circumstances of this case.
  - g. That the cost of this Application be provided for.
2. The application is based on the grounds listed on the face therein inter alia;
- i. That Article 40 of the *Constitution* as read together with the provisions of *Land Act* and the *Land Registration Act* guarantees the right to property.
  - ii. That Order 40 Rule 1 and 2 gives this court the jurisdiction and authority to issue orders of temporary injunction to protect the right and interest in property pending the hearing of the main suit.
  - iii. That the Applicant herein is the legal and/or beneficial owner of all those parcels of land known as Land Reference Number LE 209/10898/20 hereinafter the Suit Properties having lived in the same property for the last 20 years uninterrupted.
  - iv. That the respondent herein did mislead the court to obtain the orders and is taking advantage of the eviction orders by trying to manipulate them and seeking a compensation hoping to reap where he did not sow.
  - v. That the orders were issued way back in May last year and he has been going around trying to manipulate the members trying to see if he can get some ash from them.
3. The application was also supported by the affidavit sworn by Moses Momanyi on the 22<sup>nd</sup> March, 2024. Mr. Momanyi deposes that the group has stayed on the suit property for the last 20 years uninterrupted and so they have a right to it. He asserts the Respondent misled the court in obtaining the impugned orders and is now using the orders to manipulate them in seeking compensation hoping to reap where he did not sow.
4. It is the Applicants averment that they were not served with any application hence they did not get opportunity to defend themselves. That the property is occupied with more than six families with school going children and evicting them will affect them socially and psychologically. That the Respondent misled the court in stating he was in the process of obtaining a title to the suit property and they annexed a map from the survey of Kenya. The Applicants urged the court to allow the application.
5. In opposition to the application, the Respondent filed a Preliminary Objection dated 27<sup>th</sup> May, 2024. The Preliminary Objection stated thus;
1. That the said application is not only frivolous, vexatious, misconceived, incompetent an abuse of the of the court process but the same is also bad in law, an afterthought, a sham and lacking in merit.
  2. The said application offends the mandatory provisions of the Civil Procedure Rules to wit joinder of parties.
  3. Muungano Youth who appears herein as Applicants are not parties in this suit.
6. The Applicants did not file submissions thus they are relying wholly on the pleadings as filed. The Respondent filed submissions dated 5<sup>th</sup> July, 2024. The submissions point that the Applicants have not been procedurally joined as a party hence they have no right of audience. The Respondent submits that the application is frivolous because no material has been placed on record to demonstrate that the



Applicants have a clear cause of action to entitle them to the reliefs they are seeking. He urged the court to dismiss the application.

7. Upon perusal of the orders sought in the application, I note that the applicant has not sought to be made a party in the proceedings. Secondly, the Applicants have moved the court seeking to set aside the orders of eviction issued on 4<sup>th</sup> May, 2023 and for injunction to stop the Respondent from evicting or trespassing into the property known as LR 209/10898/20 pending determination of the application and suit.
8. However, the Applicants have not sought an order to set aside the judgment delivered on 7<sup>th</sup> July, 2022 which granted the eviction orders. Further, the Applicants have not presented any basis why they would want the orders of 4<sup>th</sup> May, 2023 or the judgment of 7<sup>th</sup> July, 2022 be set aside. I am alive to the fact that the Applicants are not represented by an advocate but they are duly bound to show proof of their entitlement to the suit property to warrant the setting aside orders.
9. They annexed a document called certificate of ownership. On the face of it, it shows the Applicant was issuing a certificate of ownership of plot 023 to a Mr. Ronald Josia Chuma. The document is not speaking of ownership by the Applicant or its nexus to LR No. 209/10898/20 (suit property). Second, the Applicant speaks of its membership who have been living on the suit property for over 20 years uninterrupted without giving specifics of the names of the said family members.
10. "The principles to be followed in an application to set aside judgment were set out in *Patel v EA Cargo Handling Services Ltd* [1974/ EA 75 at p 76 where Duffus P said:-  
  
"I also agree with this broad statement of the principles to be followed. The main concern of the Court is to do justice to the parties, and the Court will not impose conditions on itself to fetter the wide discretion given to it by the rules. I agree that where it is a regular judgment as is the case here the Court will not usually set aside the judgment unless it is satisfied that there is a defence on the merits. In this respect, defence on the merits does not mean, in my view, a defence that must succeed, it means as Sheridan J, put it "a triable issue" that is an issue which raises a prima facie defence and which should go to trial for adjudication. "
11. In this instance, the applicant has not shown they have any defence to warrant the setting aside of a regular judgement. The application is found meritless and is hereby dismissed. I make an order that each party to bear their costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**A. OMOLLO**

**JUDGE**

