



**Maina v Nyangweso & 5 others (Environment & Land Case  
E012 of 2024) [2024] KEELC 13816 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13816 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E012 OF 2024  
LL NAIKUNI, J  
DECEMBER 16, 2024**

**BETWEEN**

**EPHRAIM MWANGI MAINA ..... PLAINTIFF**

**AND**

**GEORGE NYANGWESO ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR MOMBASA ..... 2<sup>ND</sup> DEFENDANT**

**LIKONI POLICE STATION ..... 3<sup>RD</sup> DEFENDANT**

**ALI SHEIKHAH SALIM ..... 4<sup>TH</sup> DEFENDANT**

**AMBROSE MGHENYI MWALUMA ..... 5<sup>TH</sup> DEFENDANT**

**ALI RAMADHAN JUMA ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

**I. Introduction**

1. The Honourable Court is tasked with the hearing and determination of the Notice of Motion application dated 30<sup>th</sup> September, 2024. It was filed in Court by George Nyangweso and Saidi Issa, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein respectively. The Application herein was brought under the provision of Sections 1A, 1B,3A, of the [Civil Procedure Act](#), Order 1 Rule 10 (2) & (14), Order 2 Rule 15, Order 51 of the Civil Procedure Rules, 2010, Section 12 of the [Government Proceedings Act](#), Cap.40, Section 22 of the National Government Coordination Act. No.1 of 2013, of Section 14 (5) of the [Land Registration Act](#), No. 3 of 2012, Section 66 of the [National Police Service Act](#), No. 11A of 2011, Article 236 of [the Constitution](#) of Kenya 2010 and all the other enabling provisions of the law.
2. Despite of the application being served, it never elicited any responses. Nonetheless, the Honourable Court still proceeded to make the determination on its own merit accordingly.



## II. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Application

3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/ Applicants sought for the following orders:-
  - a. That this Honourable Court be pleased to strike out the personal names of the George Nyangweso and Saidi Issa sued as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively as parties to this suit.
  - b. That this Honourable Court to order that the personal names of the George Nyangweso and Saidi Issa sued as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively be hereby substituted with the names Land Registrar Mombasa and DCIO Likoni Police Station respectively.
  - c. That costs of this application be in the cause.
4. The application is supported by the grounds, testimonial facts and the averments made out under the 14 Paragraphed supporting affidavit of GEORGE NYANGWESO, the 1<sup>st</sup> Defendant and the Land Registrar in charge at the Ministry of Lands Mombasa County Lands Registry Office who averred that:-
  - a. The affidavit was in support of their Notice of Motion application dated 30<sup>th</sup> September 2024.
  - b. He had been sued in his personal names George Nyangweso as a party to these proceeding and enjoined as the 1<sup>st</sup> Defendant/Applicant herein.
  - c. George Nyangweso and Saidi Issa sued as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants respectively had been improperly enjoined as parties to this suit.
  - d. He was a public officer appointed in accordance with the provision of Section 12 of the [Land Registration Act](#), No. 3 of 2012.
  - e. In the execution of my official duties, he was protected under the provision of Section 14 (5) of the same act together with other relevant laws.
  - f. Enjoining his personal name George Nyangweso being sued as the 1<sup>st</sup> Defendant/Applicant in this instant suit was mischievous, incompetent, bad in law and an abuse of the court process.
  - g. The Plaintiffs/Respondents' pleadings never disclosed any legal or justifiable claim to the extent that no cause of action lied as against him in his personal capacity in execution of his public duties.
  - h. Any relief sought as against him in his personal capacity were not available and/or merited.
  - i. The continued participation of himself in his personal capacity as the 1<sup>st</sup> Defendant/ Respondent in these proceedings were unwarranted and unjustified where in any event any adverse orders would be issued and he would be prejudice.
  - j. The instant suit was frivolous and/or vexatious and therefore lacked merit.
  - k. In the foregoing he had no personal interest at all in this matter and he only sought to correct this misjoinder.
  - l. It would be in the interest of justiceto allow this application as prayed.
  - m. The application was made in good faith.



### III. Submissions

5. On 5<sup>th</sup> November, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 30<sup>th</sup> September, 2024 disposed of by way of written submissions and all the parties complied. Unfortunately, by the time the Honourable Court was penning down the Ruling, it had not accessed written submissions from any of the parties herein. Pursuant to that the Court thereby reserved the ruling to be delivered on Notice.

### IV. Analysis and Determination

6. I have carefully read and considered the pleadings herein made by the by the Learned Counsels, the relevant provisions of the Constitution of 2010 and statutes. In order to arrive at an informed decision, the Honorable Court has two (2) framed the following issues for determination.
- a. Whether the Notice of Motion application is merited?
  - b. Who bears the Costs of the Notice of Motion application dated 30<sup>th</sup> September, 2024.

#### Issue No. a). Whether the Notice of Motion application is merited

7. Under this sub - title, the Honourable Court shall examine the merits of the Notice of Motion application. In so doing, the Honourable Court will endeavor to explore several provisions of the Law. The provisions of Articles 232 and 260 of the Constitution of Kenya defines the values and principles of Public service and a Public Officer as:-

Article 232 (1):- “The values and principles of public service include:-

- a. High standards of professional ethics;
- b. Efficient, effective and economic use of resources;
- c. Responsive, prompt, effective, impartial and equitable provision of services;
- d. Involvement of the people in the process of policy making;
- e. Accountability for administrative acts;
- f. Transparency and provision to the public of timely, accurate information;
- g. Subject to paragraph (h) and ( I ), fair competition and merit as the basis of appointment and promotions;
- h. Representation of Kenya’s diverse communities; and
  - i. Affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of:-
    - i. Men and women;
    - ii. The members of all ethnic groups; and
    - iii. Persons with disabilities.

Article 260: “Public Officer” means:-

- a) any state officer; or



- b) any person, other than a State Officer, who holds a public office; “public office” means an office in the national government, a county government or the public service, if the remuneration and benefits of the officer are payable directly from the Consolidated Fund or directly out of money provided by Parliament”
8. In addition, the Learned Counsel for the Defendants/Applicants referred Court to the provisions Section 4 (3) of the [Government Proceedings Act](#) which provides that:-
- “where any functions are conferred or imposed upon an officer of the Government as such either by any rule of the common law or by any written law, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Government in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Government.”
9. Similarly, the provision of Article 156 (4) of [the Constitution](#) of Kenya, 2010 states that:-
- The Attorney-General—
- a) is the principal legal adviser to the Government;
- b) shall represent the national government in court or in any other legal proceedings to which the national government is a party, other than criminal proceedings; and
- c) shall perform any other functions conferred on the office by an Act of Parliament or by the President.
10. Indeed, the provision of Section 12 (1) of the [Government Proceedings Act](#), Cap. 40 provides as hereunder:
- Subject to the provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Attorney-General, as the case may be.
11. It is trite law that public officers do not enjoy immunity from litigation in respect to acts, which though done in the name of the office, are overtly outside the remit of their offices. If there is need for support of this now well settled proposition, where I held in the decision of this Court in “Ethics and Anti-Corruption Commission – Versus - Judith Marilyn Okungu & another (2017) eKLR” where the Court held as follows;
- “... There is ample authority to the effect that a person against whom fraud or illegality is alleged cannot escape personal liability (should the fraud or illegality be proved) on the basis that he was acting as an agent or servant of another. Indeed, government functionaries of whatever seniority are not immune from personal liability for unlawful acts such as deceit, fraud or contempt of court. See Standard Chartered – Versus - Pnsc (supra) and M. v Homes Office & Anor (supra). The latter case locates this personal liability at the heart of the rule and quotes Prof. Dicey in the following terms;
- “When we speak of the rule of law as a characteristic of our country,[we mean] not only that no man is above the law. But (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. In England the idea of legal equality, or the universal subjection of all classes to one law administered by the ordinary courts, has been pushed to its utmost limit. With us every official, from Prime Minister down to a constable or a collector of



taxes, is under the same responsibility for every act done without legal justification as any other citizen. The reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of state, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is any private and unofficial person. (See Introduction to the Study of the Law of *the Constitution* (10th edn, 1965) pp193-194.)”

12. In the end, I find that even from the Plaint dated 20<sup>th</sup> February, 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants have been sued in their personal and individual capacity. Clearly, based on the above legal prepositions is not procedural. Therefore, for these reasons, I discern that they should be discharged from the proceedings as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and henceforth be substituted with the official designated titles of the Land Registrar Mombasa and DCIO Likoni Police Station respectively who’s offices are mandated to undertake claims on behalf of government bodies or officers undertaking their official duties. The Plaintiffs are directed to cause the appropriate amendments to the filed pleadings under the provision of Order 8 Rules 3 of the Civil Procedure Rules, 2010 within the stipulated timeframe to reflect these orders accordingly. The outcome of the same is that the application is found to have merit and the same is allowed.

**Issue b). Who bears the Costs of the Notice of Motion application dated 30<sup>th</sup> September, 2024.**

13. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.
14. In the present case, the Honourable Court elects to have the costs in the cause.

**V. Conclusion & Disposition**

15. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-
  - a. That the Notice of Motion application dated 30<sup>th</sup> September, 2024 be and is hereby found to have merit and thus it is allowed.
  - b. That this Honourable Court be and is hereby pleased to strike out the personal names of the George Nyangweso and Saidi Issa sued as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively as parties to this suit.
  - c. That this Honourable Court do issues an order that the personal names of the George Nyangweso and Saidi Issa sued as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively be hereby substituted with the names Land Registrar Mombasa and DCIO Likoni Police Station respectively.



- d. That pursuant to this, the Plaintiffs herein are directed to cause, file and serve appropriate Amendments of the filed Plaint under the provisions of Order 8 Rules 3 of the Civil Procedure Rules, 2010 WITHIN THE NEXT FOURTEEN (14) DAYS of this Ruling hereof.
- e. That for expediency sake, the matter to be mentioned on 5<sup>th</sup> February, 2025 for purposes of conducting a Pre – Trial Conference and taking a hearing date.
- f. That the costs of the application to be in cause.

IT IS SO ORDERED ACCORDINGLY.

**RULING DELIVERED THROUGH THE MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 16<sup>TH</sup> DAY OF DECEMBER 2024.**

.....

**HON. MR. JUSTICE L. L. NAIKUNI,  
ENVIRONMENT AND LAND COURT AT MOMBASA**

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. Mr. Mwawasi Advocate holding brief for Mr. Asige Advocate for the Plaintiffs/Respondents.
- c. Mr. Kemei Advocate for the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> Defendants/Applicants.
- d. Mr. Mohammed Advocate holding brief for Mr. Khalid Salim for the 3<sup>rd</sup> Defendant.
- e. Mr. Mohammed Advocate for the 5<sup>th</sup> Defendant.
- f. No appearance for the 4<sup>th</sup> Defendant.

