



**Njuguna v Daraja Capital Limited & another (Environment & Land Miscellaneous Case E010 of 2023) [2024] KEELC 13706 (KLR) (10 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13706 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND MISCELLANEOUS CASE E010 OF 2023  
JG KEMEI, J  
DECEMBER 10, 2024**

**BETWEEN**

**SAMUEL MUIRURI NJUGUNA ..... APPLICANT**

**AND**

**DARAJA CAPITAL LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**PETER KABATHI KIMANI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before the Court is the Application dated the 24/5/2024 seeking the following orders;
  - a. The Court be pleased to reinstate this matter that as dismissed on 20/5/2024 for non-appearance.
  - b. That the Court grant orders directing the Land Registrar Kiambu to place a restriction against any form of interference with the land parcel Lari/Kirenga/1953 as the same is a subject of interest before the Court.
  - c. The 1<sup>st</sup> Respondent by himself or through her agents or servants and or any other person acting under his instigation or on her behalf from any form of interference with the suit land.
  - d. That the Court be pleased to grant orders for institution of a fresh action by way of an appeal as per the provisions of Order 25 rule 4 of the Civil Procedure Rules following the unprofessional conduct and withdrawal of the previous appeal against the Judgement and all consequential orders granted in ELC 94 of 2018.
  - e. The Court be pleased to allow the Applicant leave to file an appeal out of time.
2. The Application is premised on the grounds annexed thereto and the Supporting Affidavit of the Applicant deponed on 24/5/2024 where he stated that he was unable to appear in Court online



because he had been given the wrong credentials for the Court and by the time he got the correct online log-in credentials his matter had been dismissed. He added that there was no cause list published for Environment and Land Court Thika on 20/5/2024 and it is not his fault that he was unable to attend Court online.

3. The Application was resisted by the 1<sup>st</sup> Respondent vide its Replying Affidavit filed by Peter Kimani Njinu who described himself as the director of the 1<sup>st</sup> Respondent with authority to swear the affidavit. The deponent gave a history of the multiple Applications filed by the Respondent to wit MCELC No 94 of 2018 which suit is pending in the lower Court at Kiambu and the Applicant has taken no steps to prosecute the same. Alongside the suit he filed an Application and sought injunctive orders restraining the Respondents from selling the suit land which Application was dismissed vide a Ruling dated the 10/5/2022. The decision has not been appealed since. That the Applications dated the 2/11/2023 and 8/5/2024 were dismissed for non-attendance. The 1<sup>st</sup> Respondent averred that the Applications are but an abuse of the process of the Court and should be dismissed.
4. On the 3/10/2024 parties took directions to file written submissions but by the time of writing the Ruling none had filed.
5. The key issue is whether the Applications dated the 2/11/2023 and 8/5/2024 ought to be reinstated.
6. Arising from the uncontroverted evidence of the Applicant, this Court is of the view that the online system can be a taunting experience for all Court users especially for the unrepresented litigants. The course of justice will be served if the Application is allowed effectively reinstating the Notices of Motion dated the 8/5/2024 and 28/7/2023 for hearing.
7. With respect I decline to consider prayers Nos. b – e as they form the gist of the applications which have been reinstated.
8. I make no orders as to costs.
9. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 10<sup>TH</sup> DAY OF DECEMBER, 2024 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Applicant – James Muiruri representing Mr. Samuel M. Njuguna

Ms. Mwiiri for the 1<sup>st</sup> Respondent

2<sup>nd</sup> Respondent – Absent

Court Assistants – Phyllis

