



Moto Moto Multi Purpose Cooperative Society Limited (Suing through Josephine K Mutua – Chairperson, George G Kimari – Secretary & Johnson Kanyongoro – Treasurer) v Odhiambo & 6 others (Environment & Land Case 17 of 2018) [2025] KEELC 2934 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 17 OF 2018**

NA MATHEKA, J

MARCH 27, 2025

BETWEEN

**MOTO MOTO MULTI PURPOSE COOPERATIVE SOCIETY
LIMITED PLAINTIFF**

**SUING THROUGH JOSEPHINE K MUTUA – CHAIRPERSON, GEORGE G
KIMARI – SECRETARY & JOHNSON KANYONGORO – TREASURER**

AND

FLORENCE A ODHIAMBO 1ST DEFENDANT

LAINA KATIKA MOROKIA 2ND DEFENDANT

BONIFACE KIIO MUTUNE 3RD DEFENDANT

JONES MWANZIA MUTUNE 4TH DEFENDANT

PATRICK OKOTH 5TH DEFENDANT

CONSOLATA MBOYA 6TH DEFENDANT

MBULA NGUKU WAEMA 7TH DEFENDANT

RULING

1. The application is dated 2nd February 2025 and is brought under Article 21(1), Article 23, Article 27(1) (2), and Article 40 of the [Constitution of Kenya](#), Section 1A, 1B, 3A and 63(e) of the [Civil Procedure Act](#) Cap 21 Laws of Kenya and Order 51(1) of the [Civil Procedure Rules](#) seeking the following orders;
 1. That this Honourable Court be pleased to certify urgent this Application and heard ex-parte and service be dispensed with.



2. That this Honourable Court do direct that the decree of permanent injunction for non-interference of land reference number 7149/10 belonging to the Plaintiff issued on 13th April, 2022 by this Honourable Court against the Defendants, their servants and agents extends to persons claiming through the Defendants jointly or severally, entities whether registered or not-registered claiming through the Defendants jointly or severally or entities or persons claiming on behalf of the Defendants jointly or severally, their servants whether paid or not, agents whether formally engaged or not, or persons associated with them or representatives from pendency of the suit in 2017, to delivery of Judgment in March 2022 to issuance of enforcement of orders of 27th October, 2023 and future in dealing with the said title 7149/10 whether in subdivision, conversation, surrender and issuance of the resultant titles or in maintaining the existing user and that their actions remained injunct as per the said decree of this Honourable Court of 13th April 2022.
3. That this Honourable Court do declare the actions by the Defendants, persons claiming through the Defendants jointly or severally, entities whether registered or not-registered claiming through the Defendants jointly or severally or entities or persons claiming on behalf of the Defendants jointly or severally, their servants whether paid or not, agents whether formally engaged or not, or persons associated with them or representatives advancing the interest of the Defendants affecting title number 7149/10 belonging to the Plaintiff during pendency of the suit herein and after Judgment of the same in March 2022 is null and void ab initio.
4. That the attempts by the Defendants, persons claiming through the Defendants jointly or severally, entities whether registered or not-registered claiming through the Defendants jointly or severally or entities or persons claiming on behalf of the Defendants jointly or severally, their servants whether paid or not, agents whether formally engaged or not, or persons associated with them or representatives to change the existing user of title number 7149/10 belonging to the Plaintiff when official search in May, 2024 is null and void.
5. That the Orders of this Honourable Court issued on 27th October, 2023 are still in force.
6. That the Directorate of Criminal Investigations, Mazingira house to enforce these Orders, the Orders of 27th October, 2023, the Judgment of this Honourable Court delivered on the 24th March, 2022 and the decree therein of 13th April, 2022.
7. That the costs of this Application be provided for.
2. It is premised on the annexed Affidavit of GEORGE G. KIMARI and grounds that the Defendants have resulted to extreme interference with the working of the Registrar of Titles in Nairobi as he tries to comply with orders of this Honourable Court issued on 27th October, 2023 and a decree of this Honourable Court issued on 13th April, 2022 in bid to frustrate the Plaintiffs and the society members in realizing the Judgment of this Honourable Court of 24th March, 2022 and frustrating enforcement of the said orders and decree, completely derailing the efforts of the Plaintiff to fully enjoy the fruit of its Judgment of 24th March 2022.
3. That even though the Defendants vacated the suit property after the Judgment of this Honourable Court, they made threats to the Plaintiffs that they would frustrate them irrespective of the court's clear Judgment and decree and now the Plaintiffs are apprehensive that unless this Honourable Court further assists the Plaintiffs in barring further interference and nullifying their actions of frustrating the Registrar of Titles Nairobi and also frustrating the Plaintiffs, the extreme interference by the Defendants, entities acting as agents of the Defendants and also claiming through the Defendants by viciously and covertly working with unknown persons in the office of the Registrar of Titles Nairobi



removing all documents belonging to the Plaintiffs and schemingly placing an application for change of user in the said file without the knowledge of the Registrar of Titles Nairobi in the course of December 2024 and currently the Registrar of Titles' work is completely stalled and the process of conversion, surrender of lease and issuance of resultant titles stalled, and unless this Honourable Court urgently intervenes, the Plaintiffs are apprehensive the Defendants and persons claiming through them, agents, servants, employees, representatives, entities some registered and others unregistered claiming through the Defendants and working for the Defendants, the Defendants will achieve their threats and this Honourable Court will have pronounced itself on the matter herein in vain.

4. That the Defendants, persons claiming through them, agents, servants, employees, representatives, entities some registered and others unregistered claiming through the Defendants and working for the Defendants, viciously interfered with the file belonging to the Plaintiff in cahoots with persons in the office of the Registrar of Titles Nairobi causing disappearance of important documents meant to help in completion process of issuance of the resultant titles from the parcel Land Reference 7149/10 situated at Mavoko, Mlolongo area off Mombasa Road Machakos County yet months before this December 2024 interference, the documents were in place and process still ongoing and even a search in the month of May 2024 indicated the Plaintiff was still the registered owner as such a change of user could not have been requested before then yet the purported letter applying for change of user indicated to have been done before May 2024 but only surfaced in the course of December 2024 stalling progress part of December 2024 and making it impossible to process any document in January 2025 and unless an urgent intervention by this Honourable Court is granted to avert further interference by the Defendants and persons or entities claiming through them or agents servants, representatives or employees of the Defendants, they will continue to frustrate the realization of the Judgment of this Honourable Court and efforts of the Registrar of Titles Nairobi in effecting the said Judgment and the orders of this Honourable Court issued on 27th October, 2023.
5. The Plaintiff believed the enforcement orders issued on 27th October, 2023 and the decree of this court issued 13th April, 2022 were final and sufficient to warrant the Registrar of Titles, Nairobi to enforce the Judgment of this Honourable Court of 24th March 2022 and help the Plaintiff to deal with its property as it deemed fit including sub-dividing amongst its members and issuance of the resultant titles but the Registrar of Titles Nairobi is unable to fully comply with the said orders due to the covert and vicious manipulative actions of the Defendants, persons claiming through them, agents, servants, employees, representatives, entities some registered and others unregistered claiming through the Defendants and others working for the Defendants, and associated with the Defendants of maliciously interfering with the Plaintiff file bearing title 7149/10 situated at Mavoko, Mlolongo area, off Mombasa Road Machakos County in the custody of the Registrar of Titles Nairobi by removing important documents halting the process of registration and issuance of resultant titles by the Registrar of Titles Nairobi and now the Plaintiff seeks the urgent intervention of this Honourable Court to nullify the said malicious and illegal actions of the Defendants, persons claiming through them, agents, servants, employees, representatives, entities some registered and others unregistered claiming through the Defendants and working for the Defendants.
6. That the said interference and malicious covert actions of the Defendants have completely halted the process of issuance of resultant titles by the Registrar of Titles Nairobi and thwarted Plaintiff's legitimate expectation of finally dealing with its land by sub-dividing it amongst its members and it's in the interest of justice that this Honourable Court urgently intervenes and do issue an order nullifying the said malicious actions and further barring every interference by the Defendants, persons claiming through them, agents, servants, employees, representatives, entities whether registered or unregistered claiming through the Defendants and working for the Defendants, and associated with the Defendants, to enable the Registrar of Titles, Nairobi to effect the orders of this court issued on 27th



October, 2023, the decree of this court issued on 13th April, 2022 and the Judgment of this Honourable Court by completing the process of conversion, surrender and issuance of the resultant titles.

7. This court has considered the application and the supporting affidavit together with the oral submissions by counsel. The application was not defended and the applicants counsel swore an affidavit that the respondents were not traced hence could not be served. I have perused the court file and find that on the 24th March 2022 judgement was delivered and the court made the following orders;
- a) The Plaintiff is the lawful owner of Land Reference Number 7149/10 situated at Mavoko, Mlolongo area, off Mombasa Road Machakos County.
 - b) An order of permanent injunction be and is hereby issued restraining the 1st to 7th Defendants, their agents and servants from further using, trespassing, erecting structures or in any other way dealing with the Land Reference Number 7149/10 situated at Mavoko, Mlolongo area, off Mombasa Road Machakos County.
 - c) The Defendants be and are hereby ordered to vacate and deliver vacant possession of LR No. 7149/10 situated at Mavoko, Mlolongo area, to the Plaintiff within Ninety (90) Days from the date hereof failure of which an Order of forcible eviction to issue upon application by the Plaintiff.
 - d) The Plaintiff be and is hereby awarded Kshs. 200,000 being General damages for trespass together with interest at court rates from the date of Judgment until payment in full.
 - e) Costs of the suit are awarded to the Plaintiff.”

8. This judgement still stands. The applicant argues that even though the Defendants vacated the said land following the Judgment of this Honourable Court of 24th March 2022, they have been surfacing after they learnt through their proxies that the Plaintiff was almost at its final stages in issuance of resultant titles from the subdivision of the said parcel and unless this Honourable Court urgently intervenes and stops the Defendants, the Plaintiff will never enjoy their constitutional right to own and enjoy their said property under Article 40 of the *constitution*. That despite the Plaintiff being declared the lawful owner of Land Reference Number 7149/10 situated at Mavoko, Mlolongo area, off Mombasa Road County by virtue of purchase and *vide* a Judgment of this Honourable Court delivered on the 24th March, 2022, it has been unable to enjoy fruits of the said Judgment because of the Defendants, persons claiming through them, agents, servants, employees, representatives, entities some registered and others unregistered claiming through the Defendants and working for the Defendants, and associated with the Defendants due to their continuous interference with the Registrar of Titles Nairobi as it complies with this Honourable Court’s Judgment and enforcement orders issued on 27th October, 2023. I find that there is no evidence linking the Defendants who vacated the premises with these activities. Indeed, these proxies and the Registrar of titles were not party to the suit and the court cannot issue orders against Third Parties some of whom are faceless and nameless. No evidence has been adduced to connect them to the Defendants who can now not be traced. Any threats are to be reported through the criminal justice system and not in this court. I therefore find that this application is unmerited and is dismissed with no orders as to costs as it was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 27TH DAY OF MARCH 2025.

N.A. MATHEKA

JUDGE

