



Muli v Ethics and Anti-Corruption Commission & another (Environment and Land Miscellaneous Application E030 of 2024) [2025] KEELC 2879 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2879 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E030 OF 2024
NA MATHEKA, J
MARCH 27, 2025**

BETWEEN

KELI BEN MULI APPLICANT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION 1ST RESPONDENT

LAND REGISTRAR - MACHAKOS 2ND RESPONDENT

RULING

1. The application is dated 5th August 2024 and is brought under Order 51 of the Civil Procedure Rules, Rule 1, 4 and 10(2) of the Civil Procedure Rules, Sections 3A, 1A and 1B of the Civil Procedure Act, Cap 21 Laws of Kenya, Section 78(2) of the Land Registration Act No. 3 of 2012, Section 3 of the Environment and Land Court Act seeking the following orders;
 1. That the Application be certified as of extreme urgency and the service hereof be dispensed with in the first instance.
 2. That this Honourable Court be pleased to issue an Order directing the 2nd Respondent to lift and or remove the Restriction restricting dealings in land parcel known as Machakos Municipality Block 1/583 registered in the name of Kimanthi Ben Muia the restriction having been lodged on the 26th of July, 2023.
 3. That costs of this Application be in the cause.
2. It is based on the following grounds that land parcel known as Machakos Municipality Block 1/583 registered in the name of Kimanthi Ben Muia. That the 1st Respondent has refused to provide reasons as to why the restriction was registered and why they failed to notify the registered owner of land parcel known as Machakos Municipality Block 1/583. That the Respondent herein have no justification on the pendency and maintenance of the restriction on the above mentioned parcel of land. That the said



Restriction has been lodged by the 1st Respondent in gross violation of the registered owner's right to property and is not keen in proving why the said Restriction should be maintained on records. That this Honourable Court has a duty to protect rights of Kimanthi Ben Muia as the registered owner of the property against the unlawful acts of the Respondents. That it is fair and just that the orders applied for herein be granted in the interest of justice and expediency.

3. This court has considered the application and the submissions therein. The Applicant seeks for court orders directing the 2nd Respondent to lift and or remove the Restriction restricting dealings in land parcel known as Machakos Municipality Block 1/583 registered in the name of Kimanthi Ben Muia the restriction having been lodged on the 26th of July, 2023. That the 1st Respondent has refused to provide reasons as to why the Restriction was registered and why they failed to notify the registered owner of land parcel known as Machakos Municipality Block 1/583.
4. The 1st Respondent submitted that the Applicant did not have the locus standi to file this application. Secondly that such orders could not be granted through an application such as this one. Lastly, that the suit land was set aside for public use and granting the orders will land it into private hands.
5. Be that as it may, Courts have taken the position that substantive orders cannot be issued in Miscellaneous Applications. Granting the orders sought will indeed conclude this matter. This is the position that was adopted in *Witmore Investment Limited vs County Government of Kirinyaga & 3 Others* (2016) eKLR wherein it was held;

So where a party such as an applicant herein seeks an order that in effect appears to resolve with finality an issue in controversy or a contested issue, the application ceases to be interlocutory and it is a misconception to describe it as such. If the applicant wanted to move this court for a final resolution of the issues in controversy raised in the application, it should have moved this court properly in the manner provided by law.”

6. In the case of *Nairobi West Hospital Limited vs Joseph Kariha & Another* (2018) eKLR it was held that;

..... .In my view this substantive order which for all intents and purposes cannot be issued through a miscellaneous application. A perusal of Order 3 Rule 1 of the Civil Procedure Rules will reveal that suit may be commenced by way of a plaint, a petition and or originating summons which is not the case here. The miscellaneous application may not offer the parties the opportunity to be heard. The order for discharge of a patient who is suffering from a rare condition stated to be ametrophyic lateral sclerosis and still admitted in the Intensive Care Unit of the applicant's hospital is strenuously opposed....Consequently, the preliminary objection is upheld and this suit is ordered struck out.”

7. For these reasons I find this application is unmerited and an abuse of the court process. I consequently dismiss it with costs to the 1st Respondent.

It is so ordered.

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

N.A. MATHEKA

JUDGE

