



**Miriti v Mbaka & another (Environment & Land Case E054 of 2021)  
[2023] KEELC 15775 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15775 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E054 OF 2021  
MN GICHERU, J  
FEBRUARY 23, 2023**

**BETWEEN**

**PETKAY SHEN MIRITI ..... PLAINTIFF**

**AND**

**ALEX MUNENE MBAKA ..... 1<sup>ST</sup> DEFENDANT**

**ABSA BANK KENYA PLC ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is on the Notice of Motion dated 6/6/2022. It seeks two main prayers as follows.
  - a. The first Defendant be denied audience in these proceedings until he returns the Plaintiff's property, items, removes goons and thugs and restores the suit property to its previous state by fixing the broken gate, windows, doors, walls and restores the Plaintiff's occupation therein.
  - b. Alex Munene Mbaka be committed to Civil Jail for a period of not less than 6 months for his barbaric and inhuman act carried out in breach of the status quo orders and during the pendency of this suit.
2. The motion does not cite the provisions of law that it is brought under but I am of the view that order 40, rule 3(1) of the *Civil Procedure Rules* and section 5 of the *Contempt of Court Act* (Act No. 46 of 2016) are applicable.
3. The motion is supported by twenty grounds, an affidavit dated 6/6/2022 and some annexures. The gist of the above material is that while there is an order dated 21/9/2021 ordering that the Plaintiff should not be evicted from the suit premises namely Ngong/Ngong/13121, the first Defendant has proceeded to evict the Plaintiff contrary to the court orders.
4. The motion is opposed by the first Defendant who has sworn a replying affidavit dated 10/2/2023 in which he denies that there was any order of injunction in favour of the Plaintiff after the dismissal of



his application for injunction on 31/1/2022. The affidavit has several annexures including a transfer instrument dated 19/4/2017 transferring the suit land to the first Defendant.

5. Counsel for the parties filed written submissions on 10/2/2023 and 17/2/2023 respectively.

I have carefully considered the notice of motion dated 6/6/2022 in its entirety including the affidavits, annexures and the written submissions by counsel for the parties.

I find that there is only issue to be decided namely, whether there was an order of injunction in force after the ruling of 31/1/2022 was delivered?

6. I find that there was no order of injunction in force after the ruling of 31/1/2022 was delivered. It should not be forgotten that when the Plaintiff filed the application dated 12/8/2021, the suit property was in danger of sale by auction. That is the reason why the Plaintiff came to court.

The status quo order lasted for as long as the application dated 12/8/2021 was pending. After its dismissal, the process that had been started prior to the filing of the suit could continue.

It goes without saying that it is not this court, but a lower court that issued the orders complained of in the current application. Whatever the case may be, the first Defendant did not breach any order issued by this court.

For the above stated reasons, I dismiss the Notice of Motion dated 6/6/2022. Costs in the cause.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 23<sup>ND</sup> DAY OF FEBRUARY, 2023.**

**M.N. GICHERU**

**JUDGE**

