



**Mueke v Kaunga & another (Environment & Land Case
221 of 2014) [2023] KEELC 17122 (KLR) (26 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17122 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 221 OF 2014
A NYUKURI, J
APRIL 26, 2023**

BETWEEN

JONES MULULU MUEKE PLAINTIFF

AND

SIMON MWANIKI KAUNGA 1ST DEFENDANT

ANTHONY KIOKO MWANIKI 2ND DEFENDANT

RULING

1. Before court are two applications; the Notice of Motion dated 16th August 2021 filed by the Defendants and the Notice of Motion dated 12th November 2021 filed by the Plaintiff.

Notice of Motion dated 16th August 2021

2. In the Notice of Motion dated 16th August 2021, the Defendants sought the following orders;
 - a. That the suit as against the 1st Defendant be marked as abated.
 - b. That the orders issued against the 1st Defendant be vacated.
 - c. That the Honourable Court be pleased to grant enlargement of time for the 2nd Defendant to file amended defence out of time in terms of the annexed draft herein and the same be deemed filed upon payment of the requisite fees.
 - d. That the costs of this application be in the cause.
3. The application is supported by the affidavit sworn on 16th August 2021 by Anthony Kioko Mwaniki the 2nd Defendant. The Defendants' case is that the 1st Defendant died on 7th July 2020 which means that the suit against him abated on 7th July 2021. That as there has been no substitution of the 1st Defendant, proceedings against him ought to be halted and orders made against him set aside. The 2nd



Defendant further stated that by an order of this court, they were granted leave to file amended defence within 14 days from 30th April 2021 but failed to comply and that the time for compliance has expired. The 2nd Defendant stated that he had been unwell, which was the reason for non compliance. The 2nd Defendant attached the death certificate of the 1st Defendant and a draft amended defence.

4. The application was opposed. The Plaintiff filed a replying affidavit sworn on 30th September 2021. It was his case that the application was brought under wrong provisions of the law and that the 2nd Defendant is a son of the 1st Defendant and that therefore having known that his father had passed on, intentionally failed to disclose that information to both the court and the Plaintiff until after one year so as to ask the court to mark the suit as having abated.
5. The Respondent further asserted that the Defendants' advocate also failed to disclose that the 1st Defendant had passed on and stated that this was the second time the 2nd Defendant was stealing a match on him, having earlier failed to make non disclosure as demonstrated in the ruling of 4th October 2019. He also stated that it is imperative that the court compels the estate of the 1st Defendant to substitute him as he is the one who fraudulently transferred the suit property to the 2nd Defendant.
6. As regards enlargement of time to file amended defence, the Respondent stated that the 2nd Defendant had been indolent as he had failed to file defence in 15 days of service of summons to enter appearance and that on 30th April 2021, they were ordered to file amended defence in 14 days but failed to comply. They stated that the amended defence would have been a nullity even if it had been filed within time as there is no valid defence on record. He faulted the 2nd Defendant's excuse of having been unwell and stated that no evidence had been produced to that effect. He stated that the 2nd Defendant in cahoots with his brother had been abusive towards him and that the delay was intentional to prolong these proceedings.

The Application dated 12th November 2021

7. In the application dated 12th November 2021, the Plaintiff sought the following orders;
 - a. Spent.
 - b. That the consent orders recorded by the 2nd Defendant alongside his mother the Plaintiff in Machakos ELC No. 169 of 2018 dated 6th May 2021 therein be declared as being of no consequence to the orders of injunction granted by this court on 30th April 2021 in ELC No. 221 of 2014.
 - c. That the order issued by this court on 7th October 2021 and dated 5th October 2021 in ELC 169 of 2018 be put in abeyance until this suit is heard and determined.
 - d. That the Land Registrar Machakos be compelled to register the orders issued by this court on 30th April 2021 in this matter.
 - e. That the Land Registrar Machakos be restrained by way of an order of injunction from acting, registering and/or dealing with the consent orders recorded by the 2nd Defendant in ELC 169 of 2018 and in particular the Land Registrar Machakos be restrained by way of an order of injunction from acting, registering and/or dealing with any orders that may be presented to his/her office by the 2nd Defendant touching on the subject suit properties namely L.R. No. Machakos/Mua Hills/1486 (also known as L.R. No. Machakos/Mua Hills/1500, 1501, 1502, 1503, 1504, 1505 and 1506) which are currently the same subject suit properties in ELC 221 of 2016 pending the hearing and determination of the suit in this matter.



- f. That the consent orders recorded by the 2nd Defendant and the Plaintiff who was suing as an attorney for her husband Simon Mwaniki Kaunga in ELC 169 of 2018 be declared as illegal, null and void ab initio for the reason that the same were recorded by an attorney on behalf of a deceased person.
 - g. That for the purpose of sanitizing the actions revolving around the subject suit properties the Land Registrar Machakos, through the office of the Hon. Attorney General be enjoined in these proceedings to avert any illegality being performed outside the realm of the orders issued by this Honourable Court in this matter.
 - h. That the costs of this application be in favour of the Plaintiff/Applicant.
8. The application was predicated on the supporting affidavit sworn by the Plaintiff on 12th November 2021. The Plaintiff's case is that on 30th April 2021, this court granted orders of injunction restraining the Defendants, their agents, employees and or personal representatives from interfering with L.R No. Machakos/Mua Hills/1486 (also known as L.R. No. Machakos/Mua Hills/1500, 1501, 1502, 1503, 1504, 1505 and 1506) (suit property) pending hearing and determination of this suit.
 9. The Plaintiff further stated that the 1st Defendant through his wife suing as an attorney instituted a separate suit against the 2nd Defendant vide Machakos ELC No. 169 of 2018 where the suit property was Machakos/Mua Hills/601 and that the suit property herein is part of parcel L.R No. Machakos/Mua Hills 601, which is currently registered in the name of the 2nd Defendant. He further stated that in Machakos ELC No. 169 of 2018, the court made an order dated 6th May 2021 which ordered the transfer of the suit property; and that on 5th October 2021, orders in favour of the 2nd Defendant were also issued in the same suit, which orders contradicted the orders made in this suit on 30th April 2021. It was the Plaintiff's position that orders granted in ELC No. 169 of 2018 on 6th May 2021 and 5th October 2021 should not be enforced as the orders of this court made on 30th April 2021 are in force and have not been set aside or discharged and that the orders in favour of the 2nd Defendant were made pursuant to non disclosure of the orders herein and that the orders were made pursuant to an attorney who was acting on behalf of a deceased person hence the same are a nullity.
 10. The Plaintiff stated that on occasions when he sought for searches from the Land Registrar, none was availed to him on allegations that the green cards were unavailable. The Respondent stated that the orders of 5th October 2021 empowered the Land Registrar to sign all necessary documents to transfer the suit property and that the correct office to sign the document is the office of the Deputy Registrar of this court.
 11. The application was opposed. The 2nd Defendant filed a replying affidavit sworn on 17th February 2021. It was his response that the orders sought can only be granted in ELC 169 of 2018 as this court cannot sit on appeal in regard to the said decisions. He also stated that when the Plaintiff filed this suit, the Defendant filed defence on 21st January 2015 and among his witnesses was Mary Simon Kaunga, wife to 1st Defendant and the 2nd Defendant's mother, but that the Plaintiff convinced Mary Simon Kaunga to change her position and file ELC No. 169 of 2018 which was the Plaintiff's suit filed through proxy meant to scuttle this suit. That the attempt by Mary Simon Kaunga to consolidate that suit with this suit was unsuccessful as the court dismissed her application. That the consent was reached after consultation with the entire family and that a decree was issued therein and that the order of 5th October 2021 was to implement the decree.
 12. In a rejoinder, the Plaintiff filed a supplementary affidavit sworn on 26th September 2022. He stated that there was no evidence that the 2nd Defendant's mother was the Plaintiff's proxy in ELC No. 169



of 2018. He stated that the pleadings by the Plaintiff in that suit indicated fraud on the part of the 2nd Defendant.

13. The two applications were disposed by way of written submissions. On record are the 2nd Defendant's submissions dated 19th November 2021 and 12th October 2022 as well as the Plaintiff's submissions dated 12th November 2021 and 26th September 2022.

2nd Defendant's Submissions

14. The 2nd Defendant's counsel submitted that as the 1st Defendant passed on on 7th July 2020, the suit as against him abated on 7th July 2021 in accordance to the provisions of Order 24 of the Civil Procedure Rules. Counsel argued that the Plaintiff failed to substitute the deceased 1st Defendant, despite being aware of his demise. Reliance was placed on the case of Hellen Njeri Mureithi (Suing as administratrix of the estate of John Peter Mureithi) v. Angela Nyawira Nduini & 3 Others [2016] eKLR, for the proposition that where a deceased Defendant is not substituted in one year from the date of their death, the suit against them abates by operation of law.
15. As regards his prayer to extend time to file amended defence, counsel argued that as the delay was not intentional and that as the 2nd Defendant is not making any fresh amendments but the intended amendments demonstrated by him, he ought to be allowed more time to file amended defence. The court was referred to the case of Paul Agwenge Angar v. Nation Media Group Limited [2006] eKLR, for the proposition that where it is shown that no prejudice would be visited on the opposite party, an application for amendment ought to be allowed.
16. On whether the orders sought by the Plaintiff ought to be granted, counsel argued that the Plaintiff's application was an omnibus application which was untenable and incapable of being allowed. Reliance was placed on the case of Murithi Wanjao (T/A Wanjao & Wanjao; Advocates) v. Samuel Mundati Gatabaki & Another [2015] eKLR, which the court has considered.
17. It was further submitted that the court issued a decree in ELC No. 169 of 2018 hence it is functus officio. Counsel took the position that it was not proper or allowed in law to re-open a matter by way of an application filed in a different suit hence the reliefs sought by the Plaintiff cannot be granted in these proceedings.
18. On whether the Plaintiff has locus to challenge ELC No. 169 of 2018, counsel submitted that that suit was settled through a consent dated 19th April 2021 and a decree dated 6th May 2021 and that therefore the consent was adopted before orders of 30th April 2021 were granted. Counsel maintained that the Plaintiff lacked the locus standi to challenge the consent judgment in ELC No. 169 of 2018 as he is not a party to that suit.
19. It was further argued for the 2nd Defendant that granting orders sought would amount to this court sitting on appeal of the decision made by a court of co-ordinate jurisdiction. Counsel was of the view that the Plaintiff ought to have invoked Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules to seek for review within the file where the orders were granted. Reliance was placed on Section 6 of the *Civil Procedure Act* to contend that this suit was sub judice.

Plaintiff's Submissions

20. On whether this suit should be marked as abated, counsel for the Plaintiff submitted that the application was incurably defective, misconceived and untenable having been brought under the wrong provisions of the law as Order 24 rule 5 cited by the 2nd Defendant, is not applicable in the circumstances as it concerns a question of the legal representative of a deceased party, yet none of the



parties has raised that issue. Further, counsel contended that although the cause of action concerns the 2nd Defendant, the element of fraud against the 1st Defendant which is the basis of the Plaintiff's claim did not survive him and that therefore the Plaintiff's case will not stand without the participation of the 1st Defendant's legal representative hence it is necessary to substitute the 1st Defendant. Counsel argued that the 2nd Defendant who was a son of the 1st Defendant intentionally neglected to substitute the 1st Defendant with a legal representative for the intention that the suit against the latter would abate so as to evade justice. Therefore, counsel prayed that in the interest of justice, this court should compel the 2nd Defendant to substitute the 1st Defendant with a legal representative.

21. On the issue of extension of time, counsel contended that equity aids the vigilant and that the 2nd Defendant had been indolent. Counsel argued that the draft amended defence touched on the deceased 1st Defendant and therefore the deceased must be substituted before the amendment. It was the position by counsel that if an amendment of the defence is allowed, the Plaintiff's case will be weakened as at the time the Plaintiff amended her plaint, she was not aware of the death of the 1st Defendant.
22. Further, counsel submitted that it was clear from the orders in ELC No. 169 of 2018 that the 2nd Defendant herein was also a party in that suit, hence he misled the court to adopt the consent on 6th May 2021 and therefore there was wilful non disclosure. Further that there is another order in ELC No. 169 of 2018 dated 5th October 2021 ordering the Land Registrar to remove cautions and restrictions from all properties and the Deputy Registrar to sign all transfer documents in favour of the 2nd Respondent. That therefore, this suit is sub judice. To buttress that point, counsel relied on the cases of Kenya National Commission on Human Rights v. Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) [2002] eKLR and Leonard Omullo v. National Land Commission [2021] eKLR. Counsel maintained that as this suit being ELC No. 221 of 2014 was filed earlier than ELC No. 169 of 2018, the consent orders were made after the injunction issued herein on 30th April 2021 and that therefore the same was sub judice.
23. Counsel maintained that orders issued in ELC No. 169 of 2018 were obtained through fraud, material non disclosure and misrepresentation hence are a nullity. Counsel argued that the Plaintiff in that suit filed her plaint on the basis of the power of attorney dated 31st October 2017 but that the donor of the power of attorney died on 7th July 2020 hence the Plaintiff had no locus to enter into the consent in 2021. Counsel referred the court to the cases of Francis Mwangi Mugo v. David Kamau Gachago [2017] eKLR and James Mbugua Miringu & 5 Others v. Elizabeth Mwhiki Miringu & Another [2019] eKLR, for the proposition that a question of locus is not a matter of technicality curable under *the Constitution* and that on the death of the donor of a power of attorney the power of attorney stands revoked.
24. On whether the Land Registrar should be joined to these proceedings, counsel submitted that the Land Registrar was served with amended plaint and injunction orders of 30th April 2021 but that he was unable to obtain searches from the Land Registrar and that to cure the mischief by the 2nd Defendant, the Land Registrar must be brought into this matter. Reliance was placed on the case of Jeremiah Creek Limited v. Tabitha Ndungu & Andrew Thiaine Imwati (Interested Party) [2022] eKLR.
25. It was also submitted that the Land Registrar Machakos ought to be compelled to register the injunction issued on 30th April 2021, so as to protect the suit property until the suit is heard and determined.



Analysis and Determination

26. I have carefully considered the two applications; affidavits in support thereto as well as replying affidavits and submissions. In my view, the issues flowing therefrom are as follows;
- a. Whether this suit as against the 1st Defendant has abated by operation of law.
 - b. Whether orders issued herein against the 1st Defendant ought to be vacated.
 - c. Whether the court should exercise its discretion in favour of the 2nd Defendant by enlarging time within which he should file his amended defence.
 - d. Whether this court, can within these proceedings declare as a nullity and or stay the orders made in ELC No. 169 of 2018.
 - e. Whether an order of injunction may issue in these proceedings restraining the Land Registrar Machakos from acting on orders issued in Machakos ELC No. 169 of 2018.
 - f. Whether there is a justification to join the Land Registrar to these proceedings.
27. Order 24 Rule 4 of the Civil Procedure Rules provides for the procedure in the event of death of one of several Defendants or sole Defendant as follows;
1. Where one or two or more Defendants dies and the cause of action does not survive or continue against the surviving Defendant or Defendants alone, or a sole Defendant or sole surviving Defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.
 2. Any person so made a party may make any defence appropriate to his character as legal representative of the deceased Defendant.
 3. Where within one year no application is made under sub rule (1), the suit shall abate as against the deceased Defendant.
28. It is therefore clear that where one of several Defendants dies and the cause of action survives, an application to join the legal representative of the deceased, ought to be filed within one year; in default of which the suit automatically abates by operation of law. For clarity, it should be borne in mind that where a suit abates by operation of law, but the cause of action survives, Order 24 rule 7 of the Civil Procedure Rules, grants the court the power to revive such a suit and extend time for substitution where it is shown on an application by the Plaintiff, that there is sufficient cause that prevented them from continuing the suit, or seeking substitution in time.
29. Therefore, the Plaintiff's argument that if this suit is marked as having abated, that will cripple his claim which is based on fraud committed by the 1st Defendant, is untenable and cannot reason not to mark the suit herein as having abated. The abatement occurs by operation of law where an application for substitution of a deceased Defendant is not made within one year. There is no dispute that the 1st Defendant is deceased. The death certificate produced by the 2nd Defendant shows that the 1st Defendant died on 7th July 2020. No application was filed within one year of the death. Even though the 2nd Defendant failed to inform the court and the Plaintiff that the 1st Defendant died on 7th July 2020, that cannot be a bar to the abatement of the suit. It may however be the basis upon which a prayer for extension of time for substitution and revival of a suit that has abated, may be premised on.



30. In the premises therefore, I find and hold that the Plaintiff's suit herein as against the 1st Defendant has abated and the same is therefore marked as abated.
31. On whether the injunction orders issued on 30th April 2021 as against the 1st Defendant ought to be vacated, I note that the same orders stated as follows;
- a. An order of temporary injunction be and is hereby issued restraining the Defendants, their agents, employees and/or personal representatives or any other person authorized by the Defendants from trespassing into, alienating or disposing off, damaging or destroying and/or possession of the property known as L.R. No. Machakos/Mua Hills/1486 (also known as L.R. No. Machakos/Mua Hills 1500, 1501, 1502, 1503, 1504, 1505 and 1506) pending hearing and determination of this suit.
 - b. The Plaintiff be and is hereby granted leave to amend his plaint as per the draft Amended Plaint.
 - c. The Amended Plaint to be filed and served within fourteen (14) days from the date of this ruling.
 - d. The Defendants are at liberty to file an amended statement of defence within fourteen (14) days from the date of service.
 - e. The costs of this application to be borne by the Defendants.
32. It is clear therefore that the injunction orders did not only restrain the Defendants, it also restrained their agents, employees, personal representatives and any other person authorised by the Defendants from interfering with the suit property. Therefore, the mere fact that the 1st Defendant is deceased is not enough to vacate the said orders as his agents, servants and others acting on his behalf may violate the order if the 1st Defendant is excluded. In any event, the 1st Defendant is deceased, the 2nd Defendant is not his personal representative and therefore has no locus to seek for any orders in favour of the deceased 1st Defendant's estate.
33. As regards enlargement of time, Order 50 Rule 6 of the Civil Procedure Rules empowers the court to enlarge time where appropriate and provides as follows;
- Where a limited time has been fixed for doing any act or taking any proceedings under these rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed;
- Provided that the costs of any application to extend such time and of any order made thereon shall be borne made thereon shall be borne by the parties making such application, unless the court orders otherwise.
34. Essentially therefore, where the ends of justice require extension of time to do any act which was ordered by the court to be done, then the power of the court to extend time is unfettered although the Applicant ought to bear the costs of the application.
35. In the case of County Executive of Kisumu v. County Government of Kisumu & 8 Others [2017] eKLR (Paragraph 23), Supreme Court restated the principles that ought to guide the court when considering an application to extend time as follows;
- Further this court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat Case to which all the parties have relied upon. The court delineated the following as;



The underlying principles that a court should consider in exercise of such discretion;

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 5. Whether there will be any prejudice suffered by the Respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases like election petitions, public interest should be a consideration for extending time.
36. It is therefore clear that the power to extend time is discretionary as that is an equitable remedy, hence the Applicant must explain the reason for the delay to the court's satisfaction; and the court ought to consider if there will be any prejudice that will be suffered by the opposite party if time is extended.
37. In the instant matter, on 30th April 2021, the court granted the Plaintiff 14 days to file and serve his amended plaint and granted the Defendants 14 days upon service to file their amended defence. I have perused the record and I note that the Plaintiff filed and served his amended plaint on 17th May 2021; which was clearly outside the time allowed by the court. The Defendants were to file their amended defence in 14 days of service. Therefore, they ought to have filed the same on or before 31st May 2021.
38. The 2nd Defendant filed the application for extension of time on 16th August 2021 and stated that the reason for the delay was because he had been unwell. Having considered the Plaintiff's response in that regard, I do not find any prejudice that the Plaintiff will suffer if time to file amended defence is extended. The Plaintiff's argument that there is no valid defence on record worthy of being amended is not plausible as it is him who sought vide his application dated 8th November 2019, that once he is granted leave to amend his plaint "the Defendants/Respondents be at liberty to file an amended statement of defence if they so wish". Indeed, vide its ruling of 30th April 2021, the court allowed that prayer by granting the Defendants leave of fourteen (14) days from the date of service of the amended plaint, to file amended defence. The order of 30th April 2021 has not been appealed against, stayed, set aside or vacated and therefore the Plaintiff's argument that the Defendants cannot file amended defence for lack of a valid defence is immaterial.
39. In the premises, I find that the reason given by the 2nd Defendant is a reasonable reason and as no prejudice has been shown that may be suffered by the Plaintiff, the prayer for extension of time to file amended defence is justified and is hereby allowed.
40. As regards the Plaintiff's prayer for this court to nullify and or stay the orders made on 6th May 2021 and 5th October 2021 in Machakos ELC No. 169 of 2018, I note that the orders sought to be nullified were made in a suit where Mary Simon Kaunga suing as an Attorney for Simon Mwaniki Kaunga was the Plaintiff and Antony Kioko Mwaniki, the 2nd Defendant herein was the Defendant. It is clear that the Plaintiff was not a party in that suit. The Plaintiff alleges that those orders were obtained fraudulently by material non disclosure as the 2nd Defendant herein failed to disclose that there was an injunction



granted herein on 30th April 2021. What the Plaintiff has not told this court is why he has moved this court in this matter to declare as a nullity orders issued by this court in another suit. If a party is aggrieved by any order or decree of the court in a suit, and intends to reverse the orders, stay them or set them aside, the options they have is inter alia to move the court by way of an application for review within the same file under Section 80 of the Civil Procedure Act and Order 45 (1) of the Civil Procedure Rules. The practice adopted by the Plaintiff is alien and cannot be countenanced by this court. In the premises, this court has no jurisdiction to interfere with its own decision in another suit already determined by this court, in the manner proposed by the Plaintiff and therefore all the prayers in regard to the orders issued in Machakos ELC No. 169 of 2018 are struck out for want of jurisdiction. The want of jurisdiction extends to the prayer for an injunction to restrain the Land Registrar from effecting orders in ELC No. 169 of 2018.

41. On the question of whether there is justification for joinder of the Land Registrar Machakos to these proceedings, I note that the Plaintiff's concern is that such joinder is necessary for him to answer why he/she has failed to register the orders of 30th April 2021 despite the same having been presented for registration at the Land Registry in Machakos on 14th June 2021.
42. Order 1 Rule 10 (2) of the Civil Procedure Rules provides that at any stage of the proceedings either the court on its own motion or on application of either party, the court may order that the name of a party who was improperly joined to the suit be struck out and add the name of any person who ought to be joined either as a Plaintiff or Defendant or whose presence before court is necessary to enable the court effectually and completely adjudicate and settle all questions in the suit.
43. It is therefore upon the Plaintiff to show that he intends to join the Land Registrar either as Defendant or Interested Party to the suit and demonstrate that the presence before court of the party being joined, is necessary to enable the court to completely determine all the questions in the suit. Having considered the supporting and further affidavit of the Plaintiff, I note that the Plaintiff has not disclosed the status of the Land Registrar upon joinder in the suit; whether they will be joined as Defendant or Interested Party.
44. I have considered the pleadings and I note that the issue/questions for determination revolve around fraud on the part of the Defendant herein. There is no liability whatsoever alleged as against the Land Registrar Machakos. The Plaintiff's complaint is that the Land Registrar failed to register the injunction granted on 30th April 2021 even after they were served on 14th June 2021 and that therefore it is important to join them to this suit to answer why they failed to register the injunction.
45. To determine whether failure to register the injunction granted herein on 30th April 2021 is sufficient justification to join the Land Registrar Machakos to these proceedings, it is important to revisit the contents of the injunction and their import and its bearing on the questions for determination arising from the pleadings in this suit.
46. At paragraph 31 of this ruling, I have cited verbatim, the entire contents of the order of injunction made by the court on 30th April 2021. The injunction was described by the court as Order No. (a) in which the court restrained the Defendants, their agents, employees and/or personal representatives or any other person authorised by them from trespassing, alienating, disposing, damaging, destroying or in any way interfering with the suit property pending hearing and determination of this suit. The other orders described as (b), (c), (d) and (e) were in regard to amendments of pleadings and costs. Having considered the injunctive orders made on 30th April 2021, there were no orders restraining the Land Registrar, Machakos, from doing anything or compelling him to do anything, and therefore the orders of injunction having been directed at the Defendants and their proxies, were not registrable by the Land Registrar. If the Plaintiff intended to have registrable orders in regard to the title herein, the Land



Registration Act No. 3 of 2012 has sufficient provisions for registrable orders including inhibitions and or caveats. It is my finding therefore that the injunction herein was specifically directed as against the Defendants in this matter and there was nothing therein to be registered by the Land Registrar Machakos. Even if the order was registrable, that alone cannot be sufficient reason for joinder of the Land Registrar to this suit. If a party is aggrieved with violation of a court order, they are at liberty to move the court by way of contempt proceedings and not to join a person to a suit whose questions in controversy have nothing to do with that person.

47. In the premises, I am not convinced that there is any justification to join the Land Registrar Machakos to these proceedings and therefore the prayer is declined.
48. In the end, the court finds and holds that the Plaintiff's application dated 12th November 2021 lacks merit and the same is dismissed. The court makes the following orders;
 - a. The suit as against the 1st Defendant be and is hereby marked as abated.
 - b. The time for filing amended defence on the part of the 2nd Defendant is hereby extended, and the 2nd Defendant is hereby ordered to file and serve amended defence in 14 days of this ruling.
 - c. There is no order as to costs.
49. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 26TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the Presence of;

Ms Mureithi for Plaintiff

No appearance for Defendants

Ms Josephine – Court assistant

