



**Solanki v Neepu Auto Spares Limited & 3 others (Civil Case
90 of 2003) [2023] KEHC 22682 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22682 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE 90 OF 2003
RE ABURILI, J
SEPTEMBER 27, 2023**

BETWEEN

NARENDRA CHAGANLAL SOLANKI PLAINTIFF

AND

NEEPU AUTO SPARES LIMITED 1ST DEFENDANT

DHANESWAR MONJI PANDYA 2ND DEFENDANT

ULLA DHANESWAR PANDYA 3RD DEFENDANT

ATTORNEY GENERAL OF KENYA 4TH DEFENDANT

RULING

1. This suit was filed in this court *vide* a plaint dated June 3, 2003 which is now over 20 years ago. The plaint was amended three times, and no hearing has taken place. So many events have taken place since 2003 including the proclamation/promulgation of the 2010 *Constitution*. Without reproducing what the plaintiff has pleaded, I will summarize the prayers sought from this court against the four defendants.
2. As against all the defendants the plaintiff, the plaintiff prays as follows:-
 - i. In terms of a declaration of a resulting trust of the proprietary interest in the suit property in favour of the plaintiff and an order that the subdivision of the parent title be duly completed and a transfer of the title comprising the suit property be duly executed and registered in favour of the plaintiff
 - ii.
 - iii. (a) A permanent injunction restraining the 1st defendant, either itself or through its servants, employees or agents, restraining them from trespassing onto the suit property and from



attempting or purporting to attach, distrain or otherwise alienate the property of the plaintiff purportedly to recover any rent or other monies from the plaintiff.

(b) Damages for unlawful trespass and for nuisance.

iv. As against the 2nd and 3rd defendant.

a. Specific performance compelling them to undertake and complete construction of an independent sewerage system on the suit property and in the alternative damages for breach of contract.

b. Damages for unlawful trespass and nuisance as against the 2nd defendant.

v. As against the 4th defendant

a. An order compelling the creation of a register for and issuance of a lease for the suit property, the registration thereof of a transfer of lease in favour of the plaintiff and the issue of a certificate of lease in favour of the plaintiff.

3. The above prayers are contained in the 3rd amended plaint dated May 25, 2005. Having perused this old bulky file and the prayers sought by the plaintiff against the defendants, especially paragraph 9 of the plaint that the plaintiff purchased land parcel No Kisumu Municipality 10/124 in early 1090 at a consideration of Kshs 250,000 plus costs of subdivision of the parent title for purpose of creating three separate and district titles and to enable the 2nd and 3rd defendants to construct an independent sewerage system on the suit property; other pleadings relate to how the agreement was not signed although the 2nd and 3rd defendants received consideration and steps were taken to subdivide the said land to create new titles but that the 2nd and 3rd defendants changed their minds regarding the sale and claimed that the same was prohibited by law hence, frustrating the sale of the suit property and refused to effect transfer of the suit property in favour of the plaintiff but in 2003, they transferred the parent title in favour of the 1st defendant which the plaintiff attributes to fraud hence the prayers sought therein.
4. From the above brief facts and prayers extracted from the 3rd amended plaint which took place in 2005, it is clear that the plaintiff's claim against the defendants jointly and severally in the respective prayers is over ownership, occupation of and title to land known as Kisumu Municipality/Block 10/124.
5. As earlier stated, this very old case, wherein even the original plaint as filed is too old and in tatters that it cannot be read as one document and I had to request the parties to supply me with another copy of plaint to enable me appreciate what cause of action it is, is a matter that was filed and even pleadings closed before the 2010 Constitution was promulgated.
6. The promulgation of the 2010 Constitution and the subsequent enactment of the laws that implement Constitution changed the landscape in litigation in many ways. More superior courts were established under article 162(2) of Constitution to hear and determine specific disputes and in this case, the Environment and Land Court as contemplated in article 162(2) (b) of Constitution was operationalized by the enactment of the Environment and Land Court Act, which Act at section 13 (1) establishes jurisdiction of the court in line with the dictates of article 162(2) (b) of Constitution.
7. In addition, article 165(5) (b) of Constitution expressly bars the High Court from hearing and determining disputes which are exclusively reserved for the Environment and Land Court, the Employment and Labour Relations Court and the Supreme Court.
8. That being the case, it is clear that Constitution itself removed from the High Court the jurisdiction to hear and determine such disputes and as jurisdiction is given by Constitution or statute, where no such jurisdiction is absent, a court of law cannot arrogate itself jurisdiction to hear and determine a dispute.



9. I am aware of the transitional and consequential provisions of Constitution which allow the pending cases as at August 27, 2010 to be heard and concluded before the courts that were seized of the jurisdiction and whereas the High Court then had jurisdiction to hear and determine a dispute of this nature, the transitional period ended with the establishment of the Environment and Land Court which is now over ten years old and therefore any matter which is within the jurisdiction of that court but is still pending in this court for hearing and determination is unacceptable.
10. Without jurisdiction, a court of law does no more than down its tools.
11. In this case, I find that this court's jurisdiction ended on August 27, 2010 and in the transitional period which also ended over ten years ago.
12. Accordingly, I direct that this matter be placed before the Environment and Land Court for further consideration as the court and the parties shall deem fit.
13. The Deputy Registrar to transmit this file forthwith to the Deputy Registrar, ELC.
14. Ruling and order to be typed/extracted forthwith.
15. From this end, this file is closed.
16. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 27TH DAY OF SEPTEMBER, 2023

R. E. ABURILI

JUDGE

