



REPUBLIC OF KENYA



**Alio & 31 others v Juma & 8 others (Environment & Land Case
E004 of 2022) [2023] KEELC 17719 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17719 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT & LAND CASE E004 OF 2022**

JM MUTUNGI, J

MAY 25, 2023

BETWEEN

MOHAMED IBRAHIM ALIO 1ST PLAINTIFF
ABDULLAHI MOHAMUD MOHAMED 2ND PLAINTIFF
MOHAMED OMAR ADAN 3RD PLAINTIFF
MOHAMED OSMAN SOKULO 4TH PLAINTIFF
FARTUN MOHAMUD MOHAMED 5TH PLAINTIFF
ADAN MURSAL HASSAN 6TH PLAINTIFF
AMINA ABDULLAHI EDIN 7TH PLAINTIFF
ADAN AHMED ABDUL 8TH PLAINTIFF
ISSACK OSMAN KULOW 9TH PLAINTIFF
KULLOW MOHAMED ALI 10TH PLAINTIFF
FATUMA MOHAMUD MAHAD 11TH PLAINTIFF
HASSAN NUROW 12TH PLAINTIFF
IBRAHIM AHMED ROBLE 13TH PLAINTIFF
ABDINOOR IBRAHIM 14TH PLAINTIFF
HAWO MUHAMUD MOHAMED 15TH PLAINTIFF
QORIYOWQDAN MANDEY 16TH PLAINTIFF
MOHAMED ALI MURSAL 17TH PLAINTIFF
ADAN SAMOW HASSAN 18TH PLAINTIFF
ABDIRIZAK MOHAMED OSMAN 19TH PLAINTIFF



HASSAN ABDI ALI	20 TH PLAINTIFF
ABDIRAHMAN MALOW HAPI	21 ST PLAINTIFF
FATUMA OSMAN BOKULOW	22 ND PLAINTIFF
ISSACK IBRAHIM SALAT	23 RD PLAINTIFF
ABDIMAJID MUKTAR ADAN	24 TH PLAINTIFF
ALIW MOHAMED ALI	25 TH PLAINTIFF
HABIBA YAKUB	26 TH PLAINTIFF
ADAN MAALIM SHUEB	27 TH PLAINTIFF
SADIYA HASSAN TULICHA	28 TH PLAINTIFF
SHALEY IBRAHIM GABOW	29 TH PLAINTIFF
MOHAMED BARICHA MOHAMED	30 TH PLAINTIFF
HADIJA HASSAN ABDI	31 ST PLAINTIFF
SAADIA ABDI ALI	32 ND PLAINTIFF

AND

AHMED JUMA	1 ST DEFENDANT
ADAN ISMAIL KERROW	2 ND DEFENDANT
HASSAN SHEIKH ABDIRAHMAN	3 RD DEFENDANT
MOHAMMED ABUBAKAR HAJI	4 TH DEFENDANT
HUSSEIN MAALIM DIKA	5 TH DEFENDANT
MANDERA COUNTY GOVERNMENT	6 TH DEFENDANT
CHIEF LAND REGISTRAR	7 TH DEFENDANT
ATTORNEY GENERAL	8 TH DEFENDANT
NATIONAL LAND COMMISSION	9 TH DEFENDANT

RULING

1. The 2nd, 3rd, 4th and 5th Defendants vide a Notice of Motion application dated October 21, 2022 moved the Court for orders that the Court orders issued on September 30, 2022 be discharged and/or set aside and that the costs of the application be awarded to the Applicants. The application was grounded and premised on the grounds set out on the face of the application and the Affidavit sworn in support thereof by Adan Ismail Kerow, the 2nd Defendant herein.
2. Inter alia the Applicants aver, that some of the Plaintiffs notably the 2nd, 18th, 16th, 9th, 26th, 11th, 21st, 22nd and 29th Plaintiffs who were alleged to have authorised and/or consented to the application dated June 15, 2022 and the suit being instituted on their behalf had in fact not given such authority and/or for consent; the Applicants averred that the said Plaintiffs had indicated they had no wish to be party to



the present suit and that they were improperly joined in the suit. The Applicants thus contend that the orders obtained at the instance of the Plaintiffs on September 30, 2022 were obtained through material none disclosure and on misleading claims, mis representation and without the knowledge of some of the Applicants. The Applicants thus pray that the orders issued by the Court on September 30, 2022 be set aside and/or discharged.

3. In the Affidavit sworn in support by the 2nd Defendant, he annexed Affidavits sworn by the 2nd, 4th, 9th, 11th, 16th, 18th, 21st, 22nd, 26th and 29th Plaintiffs where they all confirm they never gave authority and/or consent for their inclusion in the suit. All the said Plaintiffs have sworn Affidavits affirming they were allocated land in Kamor Location within Mandera East Sub County and were issued with ownership certificates by the Mandera County Government and averred that they could not be party to the suit that was challenging the ownership of the same land that they were beneficiaries of.
4. The 1st Plaintiff Mohammed Ibrahim Alio swore an Affidavit dated January 10, 2023 in opposition to the Applicants application dated October 21, 2022. The 1st Plaintiff averred that the Applicants even though they had been served with the application dated June 16, 2022 chose not to participate in and/or oppose the application and the Court upon a careful evaluation made the Ruling delivered on September 30, 2022 on merit. The 1st Plaintiff averred that notwithstanding that a number of the Plaintiffs have expressed their wish to withdraw from the suit the remaining ones still would like to continue with the suit. The 1st Plaintiff avers the Applicants intention appears to be to have the injunctive orders issued on September 30, 2022 discharged so that they could have a free hand to interfere with the suit property including obtaining the eviction of the Plaintiffs.
5. The County Secretary Mandera County Government swore an affidavit dated February 20, 2023 in support of the Applicants application dated October 21, 2022. The County Secretary deponed that the suit property was located within Mandera Township and was not Community land. He stated the land had been gazetted by the defunct Town Council of Mandera as Urban Settlement and that owing to public demand, the Ministry of Lands decided to have the land surveyed for the settlement of Kamor Squatters and for provision of public utilities. The County Secretary explained that the Kamor squatters were allocated the plots after due public participation and that due process was followed in making the allotments. The County Secretary stated that a total of 206 plots were surveyed and allocated to Kamor squatters and that the 1st Plaintiff was one of the beneficiaries as he was allocated Plot No KSP/45/2021. The county Secretary asserted that the Plaintiffs in approaching the Court for injunctive orders vide the Application dated June 16, 2022 withheld vital information, falsified the facts and misled the Court with the intention of disrupting the process of land administration and Management in Mandera County Government. The County Government's position therefore was that the Plaintiffs materially misrepresented the facts and concealed material information so as to mislead the Court and that constituted abuse of the Court process which the court ought not to tolerate and/or condone.
6. The Applicants application dated October 21, 2022 was canvassed by way of written submissions. The Applicants submitted that in view of the fact that several of the Plaintiffs who had supposedly given instructions to the Law Firm of Laichena Mugambi & Ayieko Advocates to file the suit on their behalf had denied doing so and had sworn Affidavits in that regard, the integrity of the suit was put to question. The several Plaintiffs who denied giving authority were also beneficiaries of plots in the same land project that they were under the suit impugning. The Plaintiffs who apparently have recanted instructions could not realistically be beneficiary of plot allocations in the same land that they claimed to be community land that was not available for the County Government to plan and allocate to individual residents. In the Affidavit sworn by the County Secretary, it was evident there was planning



done, public participation and allocation of plots as per the annexed allocation list covering 206 plots. Amongst the allottees were some of the Plaintiffs.

7. The Plaintiffs Notice of Motion dated June 16, 2022 was predicated on the 32 Plaintiffs having a commonality of interest in the suit property. The Plaintiffs had all apparently signed an authority on June 16, 2022 authorising the 1st Plaintiff to appear, plead and act on their behalf in these pleadings. Some of the Plaintiffs notably 2nd, 18th, 16th, 9th, 26th, 11th, 21st, 22nd and 29th Plaintiffs have sworn Affidavits denying they authorised the filing of the suit and correspondingly the Notice of Motion application dated June 16, 2022. That of necessity affected the entire credibility of the suit. The 1st Plaintiff pleaded on behalf of all the Plaintiffs and some for whom he purported to act on behalf have stated they never gave him authority and are surprised their names were used in the suit. Indeed, it is their position that they support what the County Government (the 6th Defendant) did.
8. I have considered the position taken by the Plaintiffs in opposition to the Applicants application to have the orders issued by the Court on September 30, 2022 discharged and I am persuaded the character of the suit has radically altered as some of the Plaintiffs have withdrawn participation as Plaintiffs and thrown their weight behind the Defendants. The record of the public participation meeting of 17/5/2021 annexed to the County Secretary's Affidavit as "BIH-A" shows that the said land as at the time had been surveyed and a total of 206 Plots made out and a list of the beneficiaries who included some of the Plaintiffs had been allocated the plots.
9. I am satisfied that as at 16/6/2022 when the Plaintiffs filed the suit and the application that resulted in the orders issued on September 30, 2022 there was material none disclosure of facts and that the Court could have been misled to issue the orders that it made. Further with some of the Plaintiffs having recanted the evidence that had been presented as being truthful, the Court has to take account of and the impact the withdrawal of the said Plaintiffs from the suit has in regard to the suit and in particular the application by the Plaintiffs dated 16/6/2022 that gave rise to the impugned Court orders issued on September 30, 2022.
10. In the present matter and given the depositions given by some of the Plaintiffs that they never authorised the filing of the suit and do not support the averments attributed to them in the suit, the integrity of the orders issued by the Court based on the material and information availed by the Plaintiffs is questionable.

Order 40 rule 7 of the [Civil Procedure Rules](#) provides as follows:-

"7. Any order, for an injunction may be discharged, or varied or set aside by the Court on application made thereto by any party dissatisfied with such order."

In the case of [Edward Karanja Kagui -vs- Barclays Bank of Kenya Ltd](#) (2002) eKLR Ringera J stated thus:-

"It is settled law that if an interlocutory injunction has been obtained by means of misrepresentation or concealment of material facts, the same will on application of the party aggrieved be discharged,"

11. In the present matter, I am satisfied there was misrepresentation and/or concealment of material facts as at the time the order of injunction issued on September 30, 2022 was made and I accordingly allow the Applicants application dated October 21, 2022 and discharge and set aside the Court orders issued on September 30, 2022. The costs of the application are awarded to the 2nd, 3rd, 4th and 5th Applicants/ Defendants.



Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA ON 25TH MAY, 2022.

JOHN M. MUTUNGI

JUDGE

