



Mburu (Suing as the legal representative of the Estate of Karugu Guandai) v Drani (Suing as the legal representative of the Estate of Patrick Futo Drani) (Environment & Land Case 717 of 2015) [2023] KEELC 18419 (KLR) (29 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18419 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 717 OF 2015**

MD MWANGI, J

JUNE 29, 2023

BETWEEN

MARY NJERI MBURU (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KARUGU GUANDAI) PLAINTIFF

AND

BOB ROBERT DRANI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PATRICK FUTO DRANI) DEFENDANT

RULING

(On re-opening of the case and application of section 22(b) of the *Civil Procedure Act* by the court *suo moto*)

1. This case was filed way back in the year 1993. It is premised on an agreement made on September 25, 1990 for sale of four (4) acres of land out of the parcel of land known as LR No 1160/156 Langata, Nairobi. This is well over 30 years ago. The suit was originally filed in the High Court at Nairobi. It was transferred to this court in the year 2015, hence the case No ELCC 717 of 2015.
2. To enable the court, deliver on its mandate of doing justice to all and in order to decide on the dispute with finality, it is necessary that the court be apprised on the current status of the title to the suit property. Indeed, rule 6 of order 21 requires that a certified copy of the title be produced to the court where there is a prayer for a judgment the grant of which would result in some alteration to the title of land registered under any written law concerning the registration of title to land.
3. None of the parties in this matter produced the current certified copy of the title or a current search showing the present status of the title. The court considers it absolutely necessary to establish the current status of the title, before rendering a final judgment in this matter.



4. Accordingly, and for purposes establishing the status of the title as aforesaid, the court will on its own motion vacate the directions on delivery of judgment, re-open the case and issue witness summons to the Director in charge of Land Administration, Nairobi and the Chief Land Registrar to clarify on the current status of the title of the suit property herein, on a date to be set by the court.

Legal Basis of the Ruling.

5. As this court stated in the case of *Jeremy Mark Block vs The Kenya Forest Service & Others* (ELC Pet 1396 of 2014), the law allows the court to, on its own motion and at any stage of the proceedings to call a witness. However, this is a discretion that must only be invoked where it is absolutely necessary for the just determination of the case and with great caution. It is also appropriate that the parties in the case be given a right to cross-examine the witness called by the court in this manner.
6. Section 22(b) of the *Civil Procedure Act* empowers the court at any time, either on its own motion or on the application of any party to,

“ Either on its own motion or on an application by any party to issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid.”
7. The *Evidence Act* at section 173 too empowers a judge or a magistrate, in order to obtain proper evidence, to ask any question, in any form, at any time, of any witness, or of the parties about any fact and to order the production of any document or thing.
8. I consider this case one such exceptional case that calls for the exercise of the court’s discretion for purposes of the just and conclusive determination of the dispute between the parties.
9. The court therefore vacates its earlier order on delivery of a judgment and re-opens the case to enable the Director in Charge of Land Administration and the Chief Land Registrar in Nairobi appear as a witnesses to appraise the court of the status of the title to the suit property LR No 1160/156.
10. The court will issue appropriate witness summons to the Director in Charge of Land Administration, Nairobi and the Chief Land Registrar or his duly authorized representative to testify before the court on the status of the title to the suit property LR No 1160/156 on an appropriate date.
11. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Mwandumbo for the Plaintiff.

Mr. Nthei holding brief for Mrs. Lumumba for the Defendant.

Court Assistant – Yvette.

M.D. MWANGI

JUDGE

