



**Syan & 2 others v Kihoro (Environment and Land Case Civil Suit  
517 of 2017) [2023] KEELC 18502 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18502 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 517 OF 2017**

**LN MBUGUA, J  
JUNE 29, 2023**

**BETWEEN**

**SURINDERPAL SINGH SYAN ..... 1<sup>ST</sup> PLAINTIFF**

**JASMEER SINGH SYAN ..... 2<sup>ND</sup> PLAINTIFF**

**SANATUMAR SHATILAL TRIVEDI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**WANYIRI KIHORO ..... DEFENDANT**

**RULING**

1. The Defendant filed a Notice of Motion application dated July 18, 2022 seeking orders that “all papers, reports, documents, pleadings, etc which have been removed from this court case file and bear the Received stamp of the Honourable Court, without the knowledge ,consent, permission or the order of the court and are now in the custody of the Director of Public Prosecution and could be lodged at the Kibera CMCC No 5220 of 2015 be restored immediately to the court file where they belong and should remain on the court record, such that if the DPP or any other person would want any of them, he, or that other person shall make an appropriate application to the Honourable Court for its consideration and serve the parties in this suit as appropriate.”
2. The application is premised on grounds on its face and on the Defendant’s supporting affidavit sworn on July 18, 2022. He avers that he has been convicted on 4 forgery charges relating to the suit land in Kibera Criminal Case No 5220 of 2015. It is his case that the criminal case was based on documents illegally obtained by the Director of Public prosecutions from the instant court file.
3. In response to the said application, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs filed a Preliminary Objection dated February 14, 2023 stating that this Court has no jurisdiction to entertain the application as the same seeks orders against a party who is not a party to this suit, and that the same is vexatious and an abuse of the Court process.



4. The Defendant opposed the Preliminary objection vide his response dated 20.2.2023. He argues that his motion seeks to restore the court record to what it was before documents were removed.
5. The court gave directions for the application and the Preliminary Objection to be heard simultaneously by way of way of written submissions. While the Defendant told the court that he filed his written submissions dated May 2, 2023 the said submissions were not uploaded on Court's digital platform (CTS) and they are not in the physical Court file either.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs filed written submissions are dated May 17, 2023. They submit that Defendant cannot obtain orders against the Office of the Director of Public Prosecutions who is not party to this suit. They rely on the case of *Joseph Njau Kingori v Robert Maina Chege & 3 others* [2002] eKLR as well as the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR.
7. I have considered all the rival arguments. The question of jurisdiction has been raised and ought to be determined first. The Supreme Court of Kenya described a preliminary objection as follows in the case of *Hassan Ali Jobo & another v Suleiman Said Shabal & 2 Others SCK* Petition No 10 of 2013 [2014] eKLR;

“...a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”.
8. The Defendant seeks orders; that documents in custody of the Director of Public Prosecution lodged at Kibera CMCC No 5220 of 2015 be returned to this Court. I pose the question; Does this court have the mandate to grant such an order?
9. In the case of *Judicial Service Commission vs. Gladys Boss Shollei & Another* [2014] eKLR, it was held that;

“Apart from the need for independence and impartiality, the right to a fair hearing under Article 50(1) of *the Constitution* encompasses several aspects. These include, the individual being informed of the case against her/him; the individual being given an opportunity to present her/his side of the story or challenge the case against her/him; and the individual having the benefit of a public hearing before a court or other independent and impartial body.”
10. And in *Mandeep Chauhan v Kenyatta National Hospital & 2 others* [2013] eKLR the court had this to say on the right to be heard:

“It is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rules enjoy superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice, is null and void and of no effect. The rule as captured in the Latin Phrase 'audi alteram partem' literally translates into 'hear the parties in turn', and has been appropriately paraphrased as 'do not condemn anyone unheard'. This means a person against whom there is a complaint must be given a just and fair hearing.”



11. I find that the Director of Public Prosecution is not a party to this suit even though he has been mentioned as a respondent in the application of July 18, 2022. As rightly put forth by the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, this court has no jurisdiction to issue orders against the Director of Public Prosecution.
12. In any case, there is no evidence that any documents were irregularly removed from this file by the Director of public prosecutions. Further, on July 12, 2022, the court gave directions that documents be traced by the Executive Officer in liaison with the Court Assistant.
13. Finally, I find that the independence and mandate of the Director of Public Prosecution are anchored in the Kenyan *Constitution* at Article 157 (10). Thus this court has no jurisdiction to give directions against the aforementioned entity touching on its investigatory and prosecution powers.
14. In the final analysis, I find that the application dated July 18, 2022 is not merited. The same is hereby dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JUNE 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

