



REPUBLIC OF KENYA



**Abdalla v Abdalla (Environment & Land Case E031 of 2022)  
[2023] KEELC 19198 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19198 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E031 OF 2022**

**MN MWANYALE, J**

**JULY 27, 2023**

**BETWEEN**

**SALIMA ABDALLA ..... PLAINTIFF**

**AND**

**SALIM ABDALLA ..... DEFENDANT**

**RULING**

1. This Ruling is in respect of an application dated May 4, 2023 seeking the following reliefs; -
  - a. Spent
  - b. Spent
  - c. That, the Honourable Court do order the Director of Criminal Investigations Land Fraud (Nairobi) to investigate within 45 days and return to Court a report touching on the following;  
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    - i. All transaction relating to land parcel Nandi/kamobo/2550 more particularly in Succ Cause High Court (Eldoret) 86 of 1999, Civil Case No. 1/2000 (Kadhi Court) and Misc Application (Eldoret) No. 180/1999).
    - ii. Any other fraudulent transaction relating to land parcel Nandi/kamobo/2550.
  - d. Costs of this application be provided for.
2. The application is supported by the grounds on the face thereof and the sworn Affidavit of the Applicant. He deponed that transactions of a criminal nature had been undertaken on the suit parcel. Further that the Respondent had made reference to non-existent documents in their list of documents filed in compliance with Order 11 of the [Civil Procedure Rules](#). That there was a likelihood of reliance



by the Court on fraudulent documents. In the premises, he was seeking for an order to the DCI to carry out investigations on the alleged fraud.

3. The Respondent filed grounds of opposition dated May 15, 2023 in which he termed the application as a waste of Court's time since the orders sought were criminal in nature. Consequently, he urged this Court to dismiss the application with costs to the Respondent.
4. When the matter came up on May 16, 2023, the Court directed that the application be canvassed by way of written submissions. These directions were complied by both parties who filed their respective submissions which this Court had taken into consideration.
5. The Applicant submitted that this Court was empowered under Section 19 (3) (d) and (4) of the Environment and Land Court Act to grant the orders sought.
6. The Respondent on his part through his advocates submitted by pointing out that the orders sought by the Applicant were being addressed in the wrong Court. That the suit property emanated from succession proceedings hence these orders should have been sought there. In the premises Counsel urged this Court to down its tools since it had no jurisdiction over the application herein.

#### **Analysis And Determination: -**

7. The Court had considered the materials canvassed in respect of an against the motion. The main issue to be determined is whether the application is merited. In addressing the same this Court takes note of the reliefs sought in the application.
8. Essentially, the Applicant is seeking for an order to the effect that investigations be carried out as to the fraud committed in relation of the suit property. Thereafter a report be filed by the DCI on the same. In the Court's view what the Applicant is seeking is the Court's assistance in obtaining evidence.
9. The Court is alive to the fact that in our adversarial system of justice, it remains the role of parties to prove whatever they allege and this burden of proof never shifts to Court for assistance in proving a fact. It is always upon the parties to adduce sufficient evidence to prove the facts they assert.
10. The Court of Appeal in the case of Peter Kirika Gitthaiga & Another vs Betty Rashid (2016) eKLR had this to say regarding the role of Court in such applications; -

“The Appellants may as well call the Document Examiner as a witness. We think that by the Appellants asking the Court to compel the DCI to produce the report, they were asking the Court to descend into the arena of conflict which the Court should at all times avoid. Further, it does appear to us that by making the application, the Appellants were seeking the Court's assistance in fishing for, gathering or retrieving evidence, hardly the role of the Trial Court in Civil proceedings.”

11. In view of the adversarial nature of our justice system, this Court is unable to grant prayer (3) of the application. The only party that can best perform this role is the one who alleges. It is noteworthy that the Applicant is alleging fraud on the part of the Respondent which is part of the Respondent which is criminal in nature. Counsel for the Applicant, I believe, is well aware of recourse in law in order to prove fraud. Unfortunately, this is not it.
12. In the premises, the application herein is dismissed with costs in the cause.

**DELIVERED AND DATED AT KAPSABET THIS 27TH DAY OF JULY 2023.**

**Hon. M. N. Mwanyale,**



## **JUDGE**

### **In the presence of;**

Mr. Tallam for Defendant/Respondent

Mr. Ng'arng'ar holding brief for Mr. Nyamweya for Plaintiff/Applicant

