



**Kahawa Sukari Residents & Plot Owners Welfare Association (suing through Mar W Ngugi Mwaniki Julius Wakobi & Dickson Maina Miano) v Kahawa Sukari Limited & 5 others (Environment & Land Case E160 of 2021) [2023] KEELC 18928 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18928 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E160 OF 2021**

**J OMANGE, J  
JULY 13, 2023**

**BETWEEN**

**KAHAWA SUKARI RESIDENTS & PLOT OWNERS WELFARE ASSOCIATION ..... PLAINTIFF  
SUING THROUGH MAR W NGUGI MWANIKI JULIUS WAKOBI & DICKSON MAINA MIANO**

**AND**

**KAHAWA SUKARI LIMITED ..... 1<sup>ST</sup> DEFENDANT  
UPTOWN AGENCIES LTD ..... 2<sup>ND</sup> DEFENDANT  
JAMES MWANGI WAGURA ..... 3<sup>RD</sup> DEFENDANT  
LUCY WARUGURU WAGURA ..... 4<sup>TH</sup> DEFENDANT  
COMMISSIONER OF LANDS ..... 5<sup>TH</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. The application dated May 10, 2021 is in respect of the properties Ruiru /Kiu/ Block 3 /1372, Ruiru / Kiu /Block 3/2981, Ruiru /Kiu/ Block 3/ 2692/ Ruiru/Kiu/ Block 3/8, and Ruiru/ Kiu/ Block 3 /3395 hereinafter referred to as the suit properties.
2. The application prays for the following reliefs:
  - a. Spent.



- b. That the honourable court be pleased to issue order restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants by themselves, their servants and/or agents or anybody claiming or acting for them or by their authority be restrained by orders of this honourable court from disposing, interfering, subdividing, selling or in any other way dealing with all that the properties referred to as Ruiru/Kiu Block 3/1372, Ruiru/Kiu Block 3 2981, Ruiru/Kiu Block 3/2692, Ruiru/Kiu Block 3/8 and Ruiru/Kiu Block 3/3095 pending the full hearing and determination of the instant suit or the further orders of this honourable court.
  - c. That the honourable court be pleased to issue orders giving authority to M/S Shaanxi Water Resources Hydropower Engineering Group Co Ltd a Chinese Company access to the land parcel No Ruiru/Kiu Block 2/2198 for the purpose of carrying of the sewer works already contracted.
  - d. Such other or further orders as the honourable court may deem fit and just to grant.
3. The application is based on the grounds inter alia that the 1<sup>st</sup> defendant has grabbed public properties reserved for the public and is currently subdividing Ruiru/Kiu/block 3/2981 into 20 plots. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> defendants have encroached into the suit properties and further that the plaintiffs have not established locus standi to file the suit. He started putting up permanent structures. The applicant contends that the lands on which the defendants have encroached were set aside for public utilities.
  4. The director to the 2<sup>nd</sup> defendant David Paul Mwangi Muiruri in his replying affidavit stated that the suit is fatally defective as the prayer for injunction is not anchored in the main suit. He further argued that this court has no jurisdiction to hear the matter as it falls within the territorial jurisdiction of Thika Law Courts. In any event the issue of ownership of the said parcel of alleged to be irregularly subdivided had been determined by the Directorate of Criminal Investigation.
  5. The case of the 3<sup>rd</sup> and 4<sup>th</sup> defendant were more or so in line with the averments by the 2<sup>nd</sup> defendant. The 3<sup>rd</sup> and 4<sup>th</sup> defendant counsel strongly argued that given that no prayer for permanent injunction was sought in the plaint the application has no legal substratum. Counsel further argued that as a holder of a certificate of title the 3<sup>rd</sup> and 4<sup>th</sup> defendants had established conclusive evidence of proprietorship.
  6. The interested party, the County Government of Kiambu submitted that the suit property is public land which was illegally grabbed through fraud and misrepresentation. Counsel urged the court to grant the interlocutory orders as sought.
  7. The issues that emerged for the courts determination are as follows; Does this court have jurisdiction to hear this matter. Does the plaintiff have locus to bring the suit in its own name. Whether the application has legal substratum. Should the court grant an order for injunction.
  8. It is contended that this court has no jurisdiction as the suit properties are situate within Kiambu County which has a land and environment court at Thika. The issue of jurisdiction once raised is one that the court must determine first. I reiterate the often repeated words in the now famous case of "*Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* (1989) IKLR dealt with a court, jurisdiction thus:-

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction.....where a court takes it upon



itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given”.

9. This court is a creation of article 162 (b) of the Constitution which donates to parliament the power to establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of and title, to land.
10. The Environment and Land Court Act at section 13 defines the jurisdiction of the court thus;
  1. The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
  2. In exercise of its jurisdiction under article 162(2)(b) of the Constitution, the court shall have power to hear and determine disputes——
    - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
    - b. relating to compulsory acquisition of land;
    - c. relating to land administration and management;
    - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
    - e. any other dispute relating to environment and land.
11. The above section does not define territorial limits to the jurisdiction of the court. However I take judicial notice of the fact that in line with the constitutional imperative to take services closer to the people, Environment and Land Courts have been established in various counties. This enhances access to justice as the distance covered to reach court is reduced.
12. Having gone through the pleadings herein it is evident the properties are situate in Kiambu County. It is likely the witnesses will be from the same county. It is also on record that other matters have been filed at the same court. This file should be handled at the same court where the other proceedings can be readily accessed if necessary. The file should therefore be heard at the Thika Environment and Land Court. In view of this finding I will not make any findings on the other issues.
13. Consequently, I order that the file be transferred to Thika Environment and Land Court for hearing and determination. The costs are to be in the cause.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 13<sup>TH</sup> DAY OF JULY 2023.**

**JUDY OMANGE**

**JUDGE**

