



**Dipa Pulling v Suchan Investments Limited & 3 others; CS Culture, Sports & Art & another (Interested Parties) (Environment & Land Case 200 of 2008) [2023] KEELC 19338 (KLR) (9 August 2023) (Ruling)**

Neutral citation: [2023] KEELC 19338 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 200 OF 2008**

**AA OMOLLO, J  
AUGUST 9, 2023**

**BETWEEN**

**DIPA PULLING ..... PLAINTIFF**

**AND**

**SUCHAN INVESTMENTS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SANDEEP R. DESAI ..... 2<sup>ND</sup> DEFENDANT**

**NIRANJAN J. DESAI ..... 3<sup>RD</sup> DEFENDANT**

**KEVIT S. DESAI ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**CS CULTURE, SPORTS & ART ..... INTERESTED PARTY**

**TURBISALAM CO. LTD ..... INTERESTED PARTY**

**RULING**

1. The application before me for determination is dated June 9, 2023 and brought under the overriding objectives sections of the [Civil Procedure Act](#) as well as section 33(5) of the [Land Registration Act](#). The 2<sup>nd</sup> interested party applicant seeks the following orders:
  - a. The Court be pleased to issue an order compelling the Land Registrar –Nairobi Registry to reconstruct the Deed File and Register for property L.R No. 209/1916/6 (IR NO 99139) in accordance with section 33(5) of the [Land Registration Act](#)
  - b. The Court be pleased to issue an order of waiver of the requirement to issue a notice of sixty (60) days in the Gazette for the reconstruction of the Deed File in relation to property LR No



209/1916/6 in accordance with section 33(5) of the Land Registration Act No. 3 of 2012 and to have the file reconstructed immediately

- c. Costs of the application be in the cause
2. The application was supported by the grounds listed on its face, inter alia that the Applicant lodged the application for registration of transfer on January 23, 2023 at Nairobi Lands Registry and was issued with application for registration number 921 and 923. That despite several follow ups, the Deed file has not been retrieved and on enquiring, the the Snr Assistant Chief Land Registrar wrote to them on May 9, 2023 indicating that the deed file is missing. That the Applicant is not the registered owner of the suit property and thus not eligible to make the application for reconstruction. He deposed that since the sale was conducted by way of public auction and the transfer documents executed by the Deputy Registrar of the court, section 33(5) of the Land Registration empowers this court/Registrar to make an order for reconstruction.
3. All the parties herein except the 2<sup>nd</sup> defendant did not oppose the application. The 2<sup>nd</sup> defendant did not file any pleading in opposition but through their counsel's oral submissions, they told the court that the application is incompetent on the basis that the Chief Land Registrar is not a party to this suit hence he cannot respond to the issues raised in the application. The 2<sup>nd</sup> defendant argues that the applicant wants the Registrar to bend the provisions of section 28 of the Act no 3 of 2012. It is his contention that the 2<sup>nd</sup> interested party/applicant ought to have moved the court by way of judicial review.
4. I have considered the application and the grounds given in support and opposition thereto. The applicant has explained that the suit property was publicised for auction in the local dailies on June 27, 2022, July 9, 2022 and October 4, 2022. The publication means that if there was any member of the public with interest in the property ought to have taken up the matter as soon as the same was brought to their attention. Secondly, this was private property and the persons interested were and have been aware that the applicant purchased the property.
5. Section 28 of the Land Registration Act refers to overriding principles and does not in any way bar the reconstruction of a file. It has not been disclosed by the second Respondent which interest will be left out if the orders herein are issued and which cannot then be entered on the title once the reconstruction is completed. The proposition that the Applicant ought to have moved the court by way of judicial review is misplaced as the application has been brought to execute a decree not to challenge the abuse of powers by a public body.
6. Section 33(5) of Act No. 3 of 2012 provides that;

“The Registrar shall have powers to reconstruct any lost or destroyed land register after making such enquiries as may be necessary and after giving due notice of sixty days in the Gazette”
7. The Applicant has shown evidence that they wrote to the Registrar to exercise the power given under 33(5) which it has not done. The Court has powers under sections 1 and 3 of the Civil Procedure Act to make orders for the ends of justice. The ends of justice in this particular case is to assist the Applicant who has expended resources in purchasing the suit property get registered as the owner thereof.
8. I am therefore persuaded to find merit in the application dated June 9, 2023 and allow it as presented.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH OF AUGUST 2023**

**A. OMOLLO**



**JUDGE**

**In the Presence of**

**Mr Muganda adv for the Applicant**

**Mr Onyango h/b for Leshan for 2<sup>nd</sup> Defendant**

**Ms Mwaura for AGN Kamau for the 1<sup>st</sup> Defendant**

