



**Ali & 3 others v Ojowi & 2 others (Sued as legal representative of
Dismas Osiri - Deceased) & another (Environment & Land Case
211 of 2009) [2023] KEELC 19967 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19967 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 211 OF 2009
AA OMOLLO, J
SEPTEMBER 21, 2023**

BETWEEN

**ISSACK IBRAHIM ALI 1ST PLAINTIFF
SALIHIA PHARMACY & MEDICAL CENTRE 2ND PLAINTIFF
PORTLAND MEDICAL CENTRE LTD 3RD PLAINTIFF
TAMAM COMMUNICATIONS CO LTD 4TH PLAINTIFF**

AND

**ELSA OJOWI, JULITA AKEYO, TERESA ADHIAMBO (SUED AS LEGAL
REPRESENTATIVE OF DISMAS OSIRI - DECEASED) 1ST DEFENDANT
DARIPRO KENYA LTD 2ND DEFENDANT**

RULING

1. Elsa Ojowi brought the current application dated November 23, 2021 under the provisions of sections 1A, 1B and 3A of the *Civil Procedure Act*; Order 40 Rule 1 of the Civil Procedure Rules; sections 152 of the *Land Act*; and article 40 and 47 of the *Constitution*. The applicant seeks to be granted orders:
 - a. Spent
 - b. Spent
 - c. Pending the hearing and determination of this application, the court be pleased to issue eviction orders against the 2nd Defendant for trespassing on the suit land belonging to the estate of Dismas Osiri Ongom-deceased.



- d. That this Court does order the 2nd Plaintiff to restore the structures they demolished on LR NO 36/II/130, pay the sum of Kshs 6,475,300 in damages for the losses incurred during the demolition of the suit premises.
 - e. This Court does order that the 2nd Defendant supply to the Court the account details where he alleges Kshs 4000000 was paid to the estate of the above named deceased.
 - f. Upon grant of prayer (e), the court does order the bank statement for the supplied accounts be tabled before the Court
 - g. The court does order the 1st Plaintiff to supply an account of and the supporting documents for the alleged sum of Kshs 20,000,000 as against the estate of Dismas Osiri-deceased
 - h. Costs of the application be provided for.
2. The application is supported by several grounds listed on its face inter alia, that the Respondents have caused the evictions to be carried out with such impunity as has never been before yet the said process was founded on illegality fraud and misrepresentation to court. She pleaded that an injustice has been meted out on the applicant and the 2nd Defendant is about to commence construction on the suit land. The Applicant contends that the decree indicates that the estate had received Kshs 40,000,000 which monies the estate has never seen.
 3. The application was opposed by the co-administrator Julita Akeyo and the 2nd Defendant. The 2nd Defendant filed a replying affidavit dated April 27, 2022.
 4. In her submissions, the co-administrator has brought to this court's attention the demise of the applicant. Be that as it may, the ruling date had already been reserved so I have to make a determination.
 5. The Applicant submitted extensively on the illegality and misrepresentation regarding the consent that was recorded on July 5, 2021 settling the dispute between the parties. For instance, she submits thus; the 1st Defendant has pleaded serious accusations of fraud and misrepresentation which in our view can only be ventilated in the main suit upon setting aside the impugned consent of July 5, 2021
 6. The application dated October 27, 2021 which seeks to set aside the impugned consent has not been prosecuted. The Applicant through submissions in the current application has invited the court to look at the grounds which in her view manifest the fraud. It is discernible from the arguments made by the Applicant that the orders she is seeking is dependent on the outcome of the application for setting aside the consent order. For instance, the order directing the restoration of the structures demolished in execution of a decree can only be granted if the impugned decree is set aside.
 7. The Applicant urged this court to direct the 2nd Defendant to supply the Court with accounts detailing payment of the alleged sum of money. The co-administrator submitted that the estate received the sum of Kshs 40,000,000 which was shared amongst the beneficiaries. The Applicant was sued as an administrator and not in her individual capacity. If one administrator has received payment to the exclusion of the other beneficiaries, then the Applicant ought to take out steps in the right court to challenge the actions of her co-administrator and also enforce her beneficial rights.
 8. In summary, the orders sought in this application do not lie as long as the application seeking to set aside the consent order/decreed has not been decided. Consequently, I strike out the application for being an abuse of the court process, premature and without merit. I will not grant any costs in view of the demise of the Applicant.

Dated, Signed and Delivered at Nairobi this 21st day of September 2023



A. OMOLLO

JUDGE

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