



**Teclेमariam v Andemariam (Environment & Land Case 20 of 2022)
[2023] KEELC 20043 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20043 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 20 OF 2022
LN MBUGUA, J
SEPTEMBER 21, 2023**

BETWEEN

TIBLESTE TECLEMARIAM PLAINTIFF

AND

HIDAT TECLE ANDEMARIAM DEFENDANT

RULING

1. Before me is a Notice of Motion Applicant dated March 10, 2023 where the defendant / applicant prays for orders that the orders given by this court on February 28, 2023 be set aside and that the application dated September 19, 2022 be heard on priority basis.
2. The background to the dispute is that the plaintiff had filed an application dated September 19, 2022 seeking orders inter alia; Injunctive orders restraining the defendant from alienating the suit property and for the rental income emanating from the suit land to be deposited in court. The plaintiff is claiming beneficial interest in the suit land plot No. 209/10722/128 averring that it belonged to her father, but that the defendant fraudulently caused the transfer of that land into her name.
3. The defendant filed a Replying Affidavit dated February 10, 2023 contending that the two parties are siblings, but that she (defendant) had purchased the suit property from their mother.
4. On October 31, 2022 the court had given directions that the rental income be deposited in court.
5. On February 28, 2023 the plaintiff's counsel expressed a desire that the matter be referred for mediation and for the application dated September 19, 2022 to be marked as spent. The defendant's counsel responded as follows:

“That is okay. I confirm that rent is being deposited in court....”



6. In that regard, the court proceeded to mark the application dated September 19, 2022 as spent; but the rent to continue being deposited in court. The court gave directions on the service of summons and filing of defence. Further, the matter was referred for mediation.
7. The orders given on February 28, 2023 are the ones the defendant desires to set aside.
8. I have considered the application at hand, the response filed by the plaintiff in the affidavit dated May 5, 2023 as well as the submissions on record.
9. The reason as to why the defendant wants the orders of February 28, 2023 revisited and revised is because she claims to be the rightful owner of the suit land where as the plaintiff did not present any documents to show her claim of beneficial ownership to the suit land.
10. I find that the matter is already before the mediation platform, of which, the court is awaiting the outcome therefrom. Further the court has already pronounced itself on the issue that the question of ownership cannot be dealt with at the interlocutory stage. In the event that there is no positive settlement in the mediation platform, the court will still determine the issue of ownership of the land in the main trial. That is primarily why the court gave directions on the closure of pleadings. The court is not expected to make conclusive finding of facts and law at this interlocutory stage *John Obare v Moses Adagata* [2016] eKLR.
11. This court has a constitutional / statutory mandate to ensure that justice is not delayed. See Article 159 (2) of the *constitution* and Section 1A & 1B of the *Civil Procedure Act*. In that regard, the court is discouraging the practice of filing unnecessary plethora of applications whose net effect is to derail the final resolution of the dispute. See *Lawrence Kinyua Mwai v Nyarigiana Farmers Co. Ltd & Another* [2019] eKLR.
12. In the end, I find that the application dated March 10, 2023 is not merited. The same is hereby dismissed. Each party is to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21st DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Osman holding brief for Mohamed for Defendant

Court Assistant: Eddel

