



Kombo & 3 others v Siro & 3 others; Joxxela Limited (Interested Party) (Environment & Land Case 2 of 2024) [2025] KEELC 1241 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1241 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 2 OF 2024
LC KOMINGOI, J
MARCH 13, 2025**

BETWEEN

**STEVE KOMBO 1ST PLAINTIFF
FRANCIS KARINGI 2ND PLAINTIFF
WILFRED KIMANI (SUING ON BEHALF OF UNION SQUARE
VENTURES) 3RD PLAINTIFF
ANDREW MUDE 4TH PLAINTIFF**

AND

**LEONARD SIRO 1ST DEFENDANT
PAUL KINUTHIA 2ND DEFENDANT
BERNARD MUYA MATIPO 3RD DEFENDANT
SCHOLASTICA NABUTU WABENDE 4TH DEFENDANT**

AND

JOXXELA LIMITED INTERESTED PARTY

RULING

1. This is the Notice of Motion Application dated 24th October 2022 brought under Section 1A, 1B, 3A and 3B of the [Civil Procedure Act](#), Order 45 & 51 Rule 1 of the Civil Procedure Rules and Article 159 of [the Constitution](#).
2. It seeks orders;
 - i. Spent



- ii. That the ex parte orders of the Court issued on 22nd September 2022 be set aside and or varied accordingly pending the hearing of this application the said orders be stayed.
 - iii. That the costs be provided for.
3. The grounds are on the face of the Application and are set out in paragraphs a to g. The same is supported by the Affidavit sworn by Paul Kinuthia, the 2nd Defendant/Applicant, on the 24th October 2022.
4. The application is premised on the grounds that the orders issued on 22nd September 2022 were issued by a Court without competent jurisdiction and should be set aside. He also averred that the substituted service of the pleadings On the Defendants/Applicants was in bad faith because at all times, the Plaintiffs/Respondents were aware that their counsel had filed a Notice of Appointment. He also pointed out that the Defendants/Applicants had appeared in person together with the Plaintiffs/Respondents in Criminal Case No. E959 of 2021 and it was easy for the Plaintiffs/Respondents to serve them personally without resorting to substituted service. That, the ex parte orders were issued without granting them an opportunity to be heard. He added that there were crops on the suit properties and such orders would lead to wasting away of the crops if not harvested. He also averred that the Defendants/Applicants' agreement with the Plaintiffs/Respondents was only a farming venture which was unsuccessful. The Plaintiffs/Respondents therefore had no claim to the suit properties which belonged to the Interested Party which had since been liquidated and sold off to other persons who are not parties to the suit.
5. The Application is opposed. There's a Replying Affidavit sworn by Francis Nduta Karingi the 2nd Plaintiff/Respondent, sworn on the 4th January 2022. He depones that the Application was frivolous because the orders were meant to preserve the subject of the suit. He stated that the application was a confirmation that the Defendants/Applicants were interfering with the Interested Party's assets and for that reason, the orders should not be set aside. He further deponed that the claim that they had been served with a Notice of Appointment by the Defendants'/Applicants' Advocates was false because the same was served on 27th October 2022 long after service by advertisement was effected on 6th September 2022. He further deponed that the 3rd and 4th Defendants'/Applicants were unknown to them, hence the only mode of service was through substituted service. The Plaintiffs/Respondents also contested the issue of jurisdiction and sought for dismissal of the application.
6. The 1st Plaintiff/Respondent Steve Kombo also filed a Replying Affidavit dated 27th January 2023 contesting the application on grounds that since the filing of this suit, the Defendants/Applicants had been carrying out activities that would defeat their interests such as changing the shareholding of the Interested Party and transferring some properties to third parties. He stated that, it was necessary to have orders in place to stop any illegal activities and to maintain the status quo.
7. This application was canvassed by way of written submissions.

The Defendants'/Applicants' Submissions

8. Counsel for the Defendants/Applicants, submitted that on 17th January 2024, the High Court in Kajiado, ruled that it had no jurisdiction to hear and determine this suit and transferred it to this Court. That this means, the Orders issued on 22nd September 2022 were issued without jurisdiction; were thus null and void and should be vacated. Reference was made to *Macfoy vs United Africa Co. Ltd* (1961) 3 ALL ER, 1169.



The Plaintiffs/Respondents Submissions

9. Counsel for the Plaintiffs/Respondents submitted that despite this suit being in Court, there was evidence that the Defendants/Applicants were still interfering with the suit properties and had transferred them to third parties. That if this was not stopped, then it would demand continuous efforts to keep amending the pleadings thus prolonging litigation or engaging the court in an academic exercise. It was further submitted that, this Court had inherent powers to issue necessary orders in the interest of justice as per Sections 1A, 1B and 3A of the *Civil Procedure Act* as well as under Article 159 of *the Constitution*. Reference was made to the case of Kenya Power & Lighting Company vs Benzene Holdings Ltd t/a Wyco Paints [2016] eKLR. Counsel also submitted that this Court had inherent powers to suo moto issue orders to protect the substratum of the suit and allow the matter to proceed without further delay citing Cigna International Health Services vs Manish Dhansukh Vaghella & another [2019] eKLR and Mulani vs Mulani; Safaricom Investment Cooperative Society Ltd (Interested Party) [2024] KEELC 4001 (KLR).

Analysis and Determination

10. I have considered the Notice of Motion, the affidavit in support, the response thereto, the written submissions and the authorities cited. The single issue for determination is:
- i. Whether the Orders issued on 22nd September 2022 ought to be set aside;
 - ii. Who should bear costs of this application?
11. The Defendants/Applicants have sought to set aside the Orders issued on 22nd September 2022 by the Kajiado High Court, contending that the Court, having determined in its Ruling dated 17th January 2023 that it lacked jurisdiction, rendered the said Orders null and void ab initio. That the said orders ought to be set aside.
12. The Plaintiffs/Respondents, on the other hand, oppose the setting aside of the Orders on the ground that the Court has inherent jurisdiction, powers, and residual authority to preserve the substratum of the suit, in the interest of justice. They contend that setting aside the Orders would undermine the Court's ability to prevent injustice.
13. Having perused the Court record, it is evident that this suit was initially filed in Nairobi in 2021 before it was transferred to the Kajiado High Court in 2022, where interim orders were issued. Subsequently, the matter was transferred to this Court as the High Court lacked jurisdiction. The record unequivocally shows that on 17th January 2023, the High Court pronounced itself as lacking jurisdiction to entertain the suit.
14. It cannot be gainsaid that jurisdiction is the bedrock of judicial authority. Without jurisdiction, a Court is bereft of the power to make any enforceable orders, and any orders issued are a nullity. This principle was aptly articulated by the Court of Appeal in *Public Service Commission & 4 others v Cheruiyot & 20 others* [2022] KECA 15 (KLR) where it stated;
- “38. A decision made by a court of law without proper jurisdiction amounts to a nullity ab initio, and such a decision is amenable to setting aside ex debito justitiae.”
15. It therefore follows that, the orders issued on 22nd September 2023 are null and void. They are hereby set aside.



16. Having set aside the said orders, the question is, does this Court have the authority to invoke its inherent jurisdiction to preserve the substratum of the suit?

17. The doctrine of inherent jurisdiction is a fundamental principle of judicial authority, allowing courts to act where necessary to ensure justice is served as enshrined under Section 3A of the [Civil Procedure Act](#) which provides that:

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

18. Sections 1A and 1B of the [Civil Procedure Act](#) affirm the need for expeditious dispensation of justice as follows:

“ 1A

- (1) - The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

1B

- (1) - For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; ...”

19. It is an undeniable reality that land disputes in Kenya are highly emotive and often protracted. The instant case is no exception, as evidenced by the trajectory of litigation and the events preceding the present application. If the Orders issued on 22nd September 2022 are simply set aside without any further intervention, the subject matter of this suit will be left exposed to unregulated use and or misuse. Furthermore, setting aside the said Orders without any other remedy would likely lead to further applications seeking injunctive reliefs, which would prolong litigation and result in judicial inefficiency. I neither think that this is effective use of judicial resources nor in the interest of timely disposal of cases. In exercising inherent jurisdiction, the Court of Appeal in *Owner of Motor Vessel*



“Mirembe Judith” v Jade International Shipping Line DMC (Civil Appeal (Application) E124 of 2022) [2023] KECA 1046 stated:

“Accordingly, this Court is clothed with inherent jurisdiction, being a court of justice, to make orders necessary for the ends of justice to be met and to prevent abuse of its process. It is a jurisdiction which is not necessarily conferred by a legal provision but which inheres in a court and may be reserved by a legal provision but not created by legal provisions, which only manifests the existence of such powers. See Ryan Investments Ltd & Another v The United States of America [1970] EA 675.

It follows therefore that the inherent jurisdiction as the name suggests is not donated to the Court by any legislation but underlie the very nature of the Court as a seat of justice which the Court ought to draw upon whenever necessary and when all else fails in order to ensure that justice is attained.”

20. Guided by the foregoing principles, this Court finds that it is imperative to issue an order preserving the status quo to ensure that the substratum of the suit is not altered in a manner that would be prejudicial to the parties and render the suit herein an academic exercise. The Notice of Motion dated 24th October 2022; succeeds partly and I make the following orders;
- i. That the Orders issued on 22nd September 2022 are hereby set aside;
 - ii. That an order of status quo is hereby issued to preserve the suit properties pending the hearing and determination of this suit;
 - iii. That costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 13TH DAY OF MARCH 2025.

L.KOMINGOI

JUDGE.

In the Presence of:

Mr. G. Gilbert for the Plaintiffs.

Mr. Njonjo for the Defendants/Respondents.

Court Assistant – Mutisya.

