



REPUBLIC OF KENYA



**KENYA LAW**  
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**Al-Maddy v Ali & 4 others (Environment & Land Case 104 of 2022)  
[2023] KEELC 22031 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 22031 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 104 OF 2022  
NA MATHEKA, J  
NOVEMBER 29, 2023**

**BETWEEN**

**MOHAMED SHEIKH ABDULRAHIM AL-MADDY ..... PLAINTIFF**

**AND**

**MOHAMED ALI ..... 1<sup>ST</sup> DEFENDANT**

**ABDALLA ALI ..... 2<sup>ND</sup> DEFENDANT**

**FAIZ ALI TAIB ..... 3<sup>RD</sup> DEFENDANT**

**NABHAN SWALEH SALIM ..... 4<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR MOMBASA ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The application is dated 11<sup>th</sup> July 2023 and is brought under Section IA & 3A of the *Civil Procedure Act* seeking the following orders;
  1. The directions given in this matter on 5.6.2023 before Hon. Lady Justice N. Matheka are set aside and fresh directions are given.
  2. Alternatively, the plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> defendants are directed to agree on a mutual forensic examiner.
  3. The costs of the suit are provided for.
2. It is grounded on the fact that this matter was listed for mention before Hon. Lady Justice N. Matheka to take a hearing date for the plaintiff's case the first time on 18.5.2023 whereby a hearing date of 18.7.2023 was ordered by court. That on 24.5.2023, the plaintiff fixed the matter again for mention on 5.6.2023 to take further directions while the parties had already fixed the matter for hearing of the plaintiff's case on 18.7.2023. The hearing date was given virtually by the court without considering the



instructions given to the counsel holding brief for the firm of Sachdeva, Nabhan & S Waleh Advocates on record for the 1<sup>st</sup> to 4<sup>th</sup> defendants. That the directions and/or orders given by court on 5.6.2023 are prejudicial to the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> defendants. That the plaintiff sought to orders from court to have the 1<sup>st</sup> to 4<sup>th</sup> defendants deliver the original documents in their list of documents to the plaintiff,

3. That by handing over the original documents to the plaintiff for examination by an Examiner appointed by the plaintiff will render the 1<sup>st</sup> to 4<sup>th</sup> defendants' Defence nugatory as the 1<sup>st</sup> to 4<sup>th</sup> defendants are apprehensive that the original documents might be tampered with or misplaced in the process making it difficult for them to prove their case. That in the alternative, both the plaintiff and the 1<sup>st</sup> to 4<sup>th</sup> defendants are allowed to agree on a mutual Forensic Examiner to examine the documents. The documents to be handed over to the Examiner and not the plaintiff so that the Defence case is not prejudiced. That it is only fair and in the interest of justice that the directions given on 5.6.2023 by court are reviewed and set aside and the parties are allowed to take fresh directions.
4. The respondent stated that the Applicants present application offends the doctrine of *Res Judicata* as directions were issued on 5<sup>th</sup> June, 2023 on the same issue that is now brought *vide* the instant application and this courts discretion should not been seen to assist a party who deliberately intends to obstruct or delay justice. That on the 18<sup>th</sup> May 2023 the court had proceeded to issue a hearing date for the main suit being 18<sup>th</sup> July, 2023 and further directed that parties file further documents (comply) before the hearing date and a further order that the Applicants Advocate supply his Advocate with original documents for scrutiny by a document examiner. That the Applicants Advocate has failed and/or refused to release the original documents in the absence of a court order and sought yet again for an order to have the said documents furnished for scrutiny. That the Applicants are in contempt of the orders of the court issued on 5<sup>th</sup> June, 2023 and the present application is a mischievous way by them to avoid being compliant and the court should not sanitize the actions/inactions of such a litigant. That the Applicants are well known to him and they want parties to agree on a mutual document examiner so that they can manipulate and control the entire scrutiny process which is the sole reason the Applicants are hesitant to supply the original documents. The Applicants are at liberty to get their own document expert if they so wish.
5. This court has considered the application and submissions therein. I have perused the court record and find that on the 5<sup>th</sup> June 2023 this court made an order that the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> defendants furnish the plaintiff with the original documents in this case for scrutiny and to be subjected for forensic examination. However, the plaintiff has failed to do so and states in the current application that the defendants would tamper with the documents or loose them altogether. I find that there is need to progress this matter to its logical conclusion. Due to the distrust between the parties I make the following orders;
  1. The plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> defendants are directed to agree on a mutual forensic examiner within the next 7 days and the documents to be released to them, in default the court to decide on one.
  2. The costs of the application to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 29<sup>TH</sup> DAY OF NOVEMBER 2023.**

**N.A. MATHEKA**

**JUDGE**

