



Garden Estate Company Limited v Hussein D/O Jan Mohamed & 2 others (Environment & Land Case 446 of 2008) [2023] KEELC 21744 (KLR) (23 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21744 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 446 OF 2008**

**MD MWANGI, J
NOVEMBER 23, 2023**

**ON RE-OPENING OF THE CASE AND APPLICATION OF SECTION
22(B) OF THE CIVIL PROCEDURE ACT BY THE COURT SUO MOTO**

BETWEEN

GARDEN ESTATE COMPANY LIMITED PLAINTIFF

AND

AMIRALI AKBARALI GULAMHUSSEIN NANJI 1ST DEFENDANT

GULBANU HUSSEIN D/O JAN MOHAMED 2ND DEFENDANT

FIROZ AKBARALI GULAMHUSSEIN NANJI 3RD DEFENDANT

RULING

1. This case was filed way back in the year 2008. The Plaintiff's case is premised on alleged agreement way back in 1989. This is well over 30 years ago. The suit was originally filed in the High Court at Nairobi. It was subsequently transferred to this court.
2. To enable the court, deliver on its mandate of doing justice and in order to decide on the dispute with finality, it is necessary that the court be appraised on the current status of the title to the suit property. Indeed, rule 6 of Order 21 requires that a certified copy of the title be produced to the court where there is a prayer for a judgment, the grant of which would result in some alteration to the title of land registered under any written law concerning the registration of title to land.
3. None of the parties in this matter produced the current certified copy of the title or a current search showing the present status of the title. None called a witness from the Chief Land Registrar's office, the custodian of the land registers. The court considers its absolutely necessary to establish the history and the current status of the title, before rendering a final judgment in this matter.



4. Accordingly, and for purposes establishing the status of the title as aforesaid, the court will on its own motion vacate the directions on delivery of judgment, re-open the case and issue witness summons to the Director in charge of Land Administration, Nairobi and the Chief Land Registrar to clarify on the history and the current status of the title of the suit property herein, L.R No. 209/2069/5, on a date to be set by the court.

Legal basis of the ruling.

5. As this court stated in the case of *Jeremy Mark Block v The Kenya Forest Service & Others* (ELC Pet. 1396 of 2014), the law allows the court to, on its own motion, and at any stage of the proceedings to call any witness. However, this is a discretion that must only be invoked where it is absolutely necessary for the just determination of the case, and with great caution. The parties in the case definitely have a right to cross-examine the witness called by the court in this manner.
6. Section 22(b) of the *Civil Procedure Act* empowers the court at any time, to,
“either on its own motion or on an application by any party to issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid.”
7. The *Evidence Act* at Section 173 too empowers a Judge or a Magistrate, in order to obtain proper evidence, to ask any question, in any form, at any time, of any witness, or of the parties about any fact and to order the production of any document or thing.
8. I consider this case one such exceptional case that calls for the exercise of the court’s discretion, under Section 22(b) of the *Civil Procedure Act* and Section 173 of the *Evidence Act*, for purposes of the just and conclusive determination of the dispute between the parties herein.
9. The court therefore vacates its earlier order on delivery of a judgment and re-opens the case to enable the Director in Charge of Land Administration and the Chief Land Registrar in Nairobi appear as witnesses to appraise the court on the history and the status of the title to the suit property, L.R No. 209/2069/5.
10. The court will issue appropriate witness summons to the Director in Charge of Land Administration, Nairobi and the Chief Land Registrar to testify before the court on the history and current status of the title to the suit property, L.R No. 209/2069/5 and produce the relevant documents in that regard, on an appropriate date
11. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF NOVEMBER 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Manyara h/b for Mr. Oyugi for the Plaintiff.

Mr. Mwihuri for the Defendants.

Court Assistant – Yvette.

M.D. MWANGI



JUDGE

