



**Ndaisi v Yusuf & 2 others (Environment & Land Case 813 of 2015)
[2023] KEELC 21717 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21717 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 813 OF 2015
EM WASHE, J
NOVEMBER 16, 2023**

BETWEEN

SOPHIA JUMA AMBARI NDAISI PLAINTIFF

AND

MOHAMMED SHEIKH YUSUF 1ST DEFENDANT

EZEKIEL KIPKULEI C.KOMEN 2ND DEFENDANT

THE REGISTRAR OF TITLES 3RD DEFENDANT

RULING

1. The 2nd defendant (hereinafter referred to as “the applicant”) filed a Notice of Motion Application dated 14th of September 2023 (hereinafter referred to as “the present Application”) seeking for the following orders against the plaintiff (hereinafter referred to as “the respondent”); -
 - a. That the application herein be certified urgent and service de dispensed with in the first instance. (spent)
 - b. That the plaintiff/respondent herein be punished for disobeying the court order issued on the 25th of October 2022 for maintenance of the status quo.
 - c. That the plaintiff/respondent be committed to civil jail for contempt of court.
 - d. That the cost of this Application be provided for.
2. The applicant in the present application has outlined the following grounds in support of the prayers sought therein;-
 - i. The respondent has and is fully aware of the *status quo* Orders issued on the 25th of October 2022 but has proceeded to disobey the said orders by constructing on the said same property.



- ii. The respondent's actions of disobeying the status quo order issued on the 25th of October 2022 have put the dignity and integrity of this honourable court into disrepute.
 - iii. The applicant's rights to the said suit property stand prejudiced by the respondent's disobedience of the status quo orders issued on the 25th of October 2022 pending the hearing and determination of this suit.
3. The respondent on the other hand has opposed the present application through the Replying Affidavit sworn on the 6th of October 2023 on the following grounds:-
 - i. The suit property has been and is in the possession and/or use of the respondent herein.
 - ii. The respondent was indeed present and participated in the Deputy Registrar's visit on the 5th of June 2023 which resulted to the Ground Report dated 6th of June 2023.
 - iii. The respondent's claim is that according to the Ground Report dated 6th of June 2023, she was confirmed to be in possession and use of the suit property on the material date.
 - iv. That subsequently thereafter and on provocation of the other 1st and 2nd respondents, the 1st Respondent sought for the honourable court's intervention to prevent interference of the suit property and/or its use pending the hearing and determination of this suit.
 - v. Indeed, the honourable court pronounced a *status quo* order on the October 13, 2022 which is still in force up to date.
 - vi. The respondent states that at the time when the *status quo* order was pronounced, she was the person in possession and her activities of cutting the grass and constructing a toilet on the said suit property for herself and her worker should not be construed as contempt of the Court orders issued on the October 6, 2022.
 - vii. The respondent further states that after issuance of the status quo orders, the 1st defendant and 2nd defendant have been harassing her by sending goons into the suit property as well as used the Police to threaten her with arrest in an effort to grab back possession.
 - viii. In essence therefore, the applicant has come to this honourable court with unclean hand seeking for an equitable remedy which should not be allowed.
 - ix. In conclusion, the respondent sought this honourable court to dismiss the present application with costs.
4. The issue for determination is whether or not the respondent acted contrary to the status quo orders issued on the October 13, 2022.
5. The Ground Report filed by the Deputy Registrar dated June 6, 2023 clearly identified the respondent to be the person in possession and use of the suit property.
6. In the Ground Report filed on the 6th of June 2023, the status of the suit property was described in a detailed manner by the Deputy Registrar.
7. The applicant in the present application is saying that the status of the suit property has been altered by the respondent by the construction of other structures which were not there on the 6th of June 2023.
8. The applicant has produced three pictures which include one with a caterpillar, another one with a container and lastly one which has bricks meant for construction.



9. The applicant is of the view that the presence of this machines and materials on the suit property is geared towards interfering with the suit property contrary to the *status quo* orders issued on the October 13, 2022 based on the Ground Report of June 6, 2022.
10. The respondent in her Replying Affidavit has admitted that she invited a contractor to come and clear the grass which had grown on the suit property hence making the said suit property unclean.
11. Further to that, the respondent lamented that the perimeter wall that was in place on the 6th of June 2023 during the Deputy Registrar's visit has been demolished by goons instructed by the Applicant thereby resulting to strangers gaining unauthorised access into the suit property.
12. The respondent presented an Occurrence Book Number from Embakasi Police Station to confirm reporting of the incidence to the said police station but no investigations and/or arrests have been made so far.
13. As of now, the respondent stated that the perimeter wall around the suit property has been interfered with and as a result, the workers who are taking care of the same are exposed to attacks.
14. The applicant did not dispute the facts that the perimeter wall which was in place on the 6th of June 2023 had been indeed demolished and a report filed at Embakasi Police Station.
15. If this is the case, then the status quo which existed on the 6th of June 2023 when the Deputy Registrar was on the ground was illegally and unlawfully interfered by other persons who have not yet been identified through the investigations by Embakasi Police Station.
16. As these investigations by Embakasi Police Station are ongoing, the suit property needs to be preserved and managed in a manner that upholds the sanctity of these proceedings and/or its title.
17. The actions by the respondents to reconstruct the perimeter wall that was in place on the 6th of June 2023 can not be deemed to be contrary to the *status quo* orders issued on the 13th of October 2022.
18. What the respondent is seeking to do is to ensure that the suit property is preserved and maintained in the manner it was on the 6th of June 2022 by reconstructing the perimeter wall.
19. In the honourable court's view, this is an act that the applicant should stand for so that in case he succeeds in this ownership claim, then he would be given possession of the property in good status and without strangers in it.
20. To this end, the honourable court is of the considered view that the Respondent's actions of reconstructing the perimeter wall that has been demolished is not in contravention of the *status quo* orders issued on the 13th of October 2022 but an effort to preserve and maintain the said *status quo* orders as issued.
21. However, the respondent is restricted to only building the replacement perimeter wall and clearing of the grass and/or vegetation bushes only.
22. If indeed there is a need to either construct a toilet and/or any other structure, such intended actions must be brought to the attention of the court for approval before anything is done on the ground.
23. The fact that the respondent was in possession and/or use of the suit property on the 6th of June 2022 when the Deputy Registrar visited the suit property and the subsequent date when the *status quo* order was granted is not a ticket for her to commence and/or develop any structures without authorisation of the Honourable Court.



24. In essence therefore, the respondent is hereby reminded that any intention and/or actions of constructing any other structure including the toilet on the suit property is hereby prohibited unless such intention is communicated to the honourable court and express authorisation granted.

25. In conclusion therefore, the present application is not merited and is dismissed with costs.

DATED, SIGNED & DELIVERED VIRTUALLY IN MILIMANI LAW COURT ON 16TH NOVEMBER 2023.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

Court Assistant: **Mr. Brian**

Advocate For The Applicant: **Mr. Ochanda**

Advocate For The Respondents: **Mr. Kitulu**

