



REPUBLIC OF KENYA



KENYA LAW
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**Rooke v Wambui & 9 others (Environment & Land Case 146 of 2018)
[2023] KEELC 21543 (KLR) (15 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21543 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 146 OF 2018
FM NJOROGE, J
NOVEMBER 15, 2023**

BETWEEN

CLIFFORD GEORGE ROOKE PLAINTIFF

AND

RUTH NYAWIRA WAMBUI 1ST DEFENDANT

AHMED WALADI AHAMED 2ND DEFENDANT

NZAI KOMBE 3RD DEFENDANT

MARY GUMO MAPINGU 4TH DEFENDANT

ZIRO BAHATI JOHNSON 5TH DEFENDANT

PETTER JOSEPH GICHOYA MBUGUA 6TH DEFENDANT

OMAGWA ANGIMA & COMPANY ADVOCATES 7TH DEFENDANT

HELLEN WAMBUI KIMANI WAINANA 8TH DEFENDANT

PATRICK KIMANI WAINAINA 9TH DEFENDANT

REGISTRAR KILIFI LANDS REGISTRY 10TH DEFENDANT

RULING

1. This ruling is in respect of Notice of Motion dated 4th August, 2023 by the Plaintiff seeking the following Orders:
 1. That for the reasons set out in the Certificate of Urgency filed herewith, service thereof be dispensed with in the first instance and the same be certified as urgent and be heard ex parte in the first instance for grant of orders (2), (3) and (4);



2. A temporary injunction be and is hereby issued restraining the Defendants herein, themselves, servants, agents and or whomsoever claiming through them from alienating, offering for sale, selling, charging, transferring, developing and or in any manner howsoever from dealing with Plot Number Kilifi/jimba/395 pending the hearing and determination of this application and the suit;
 3. A temporary injunction be and is hereby issued restraining the Defendants/Respondents either by themselves, their agents, servants and/or representatives from inhibiting, alienating, dealing and /or in any manner dealing and developing Plot Number Kilifi/jimba/395 pending the hearing and determination of this application and the instant suit;
 4. The Officer Commanding Station (OCS) Watamu Police Station, to provide necessary security on Plot Number Kilifi/jimba/395 in order to enforce this Honourable Court orders;
 5. The plaintiff be allowed to amend the plaint as per the annexed draft and/or the draft amended plaint be allowed as properly on record as amended and be served upon the intended 11th Defendant within 2 days;
 6. The Honourable Court be pleased to make any further orders or directions as it may deem fit and just in the circumstances; and
 7. Costs for the application be provided for;
2. The grounds upon which the application is made are at the foot of the application and are elaborated in the attached supporting affidavit of the plaintiff. Namely, they are that there is urgent need to preserve the status of the Plot Number Kilifi/jimba/395 as well as need to amend the plaint. It is alleged that the 1st -5th defendants executed a sale agreement on 19/11/14 with the plaintiff for the sale of the suit property and that the plaintiff made part-payment of the consideration subject to certain conditions incumbent upon the defendants regarding regularization of title, upon fulfilment of which they would transfer the property to the plaintiff. The present suit was filed as a result of the failure by the defendants to transfer the suit land as agreed by the parties, and as a result of the intention evident on the part of the defendants to transfer the suit land to the 8th and 9th defendants. In the year 2021 the plaintiff lodged a caution on the title to the suit property and has never withdrawn the same, but nevertheless the 1st-5th defendant have entered into another agreement with, and the property has been transferred to, the 8th and 9th defendants notwithstanding the pendency of the present suit. It is stated that upon perusing the defendants' documents, it has become necessary for the plaintiff to amend the plaint to join another party. Further, the 8th and 9th defendants have since commenced developments on the suit property and unless the orders sought are granted the applicant may suffer irreparable harm that may not be compensable by way of damages. It is also added that the respondents may not suffer any prejudice by the granting of the orders sought.
3. There is an affidavit of service dated 24/8/2023 stating that the application was served upon all the defendants 'advocates. There is another affidavit of service dated 18/9/2023 stating that the hearing notice for 2/10/2023 had been served on all the defendants' advocates. However, the defendants did not file any responses to the application. On 2/10/2023 the defendant's counsel namely Mr. Marubu and Mr. Omagwa as well as Ms. Lutta were present in court while the plaintiff's counsel was absent. All of them claimed not to have been served with the motion, and the court gave orders that the motion dated 4/8/2023 should be served and an affidavit of service filed. This court does not see any affidavit of service filed in the court file after that order issued, and it cannot therefore tell whether or not the application was served. I am therefore not satisfied that the plaintiff's application dated 4th August, 2023 was served. There are also no submissions filed by the plaintiff nor any filed by the defendants.



4. In the circumstances where the plaintiff ought to be hotly pursuing the application, he has portrayed himself negatively as a very lackadaisical applicant. By reason of non-compliance with court orders, I hereby strike out the motion dated 4/8/2023 and I order that the matter be listed on 29/11/2023 for the taking of a hearing date.

DATED, SIGNED AND ISSUED AT MALINDI ON THIS 15TH DAY OF NOVEMBER 2023.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

