



**Ndambuki & another (Suing as an administrator of the Estate of the late Gregory Ndambuki) v Osman & 2 others (Environment & Land Petition E022 of 2023) [2023] KEELC 22348 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22348 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION E022 OF 2023  
LN MBUGUA, J  
DECEMBER 14, 2023**

**BETWEEN**

**MARIA NDUMBA NDAMBUKI ..... 1<sup>ST</sup> PETITIONER  
KIENDI NDAMBUKI ..... 2<sup>ND</sup> PETITIONER  
SUING AS AN ADMINISTRATOR OF THE ESTATE OF THE LATE GREGORY  
NDAMBUKI**

**AND**

**ABBEY ABDINOOR OSMAN ..... 1<sup>ST</sup> RESPONDENT  
NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT  
CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This matter came up on 19.9.2023 whereby, the court gave directions for the suit to be heard by way of written submissions. The petitioners were to file their submissions along with any further affidavit by 17.10.2023, while the respondents were to file their submissions by 1.11.2023. The matter was then to be mentioned on 4.12.2023 to confirm the filing of the submissions.
2. Come the date of 4.12.2023 and the 1<sup>st</sup> respondent indicated to the court that they had filed 2 replying affidavits, one filed on 5.10.2023, while the other was filed on 16.10.2023. The 1<sup>st</sup> Respondent made an oral application for the earlier affidavit to be expunged from the records. This ruling relates to the aforementioned application.
3. In opposition, counsel for the 3<sup>rd</sup> Respondent argued that the 1<sup>st</sup> Respondent's affidavits take contrary positions with no justification, hence expunging them will be prejudicial to their clients. He prays that the 2<sup>nd</sup> affidavit be the one to be expunged from the records.



4. On its part, the Attorney General submits that it already took the position taken by the 1<sup>st</sup> Respondent in its first affidavit. Adding that the 2<sup>nd</sup> affidavit only introduces the issue that the petitioner has applied for allocation of the land and that there ought to have been no application of the land if there was a status quo order.
5. The Petitioners did not oppose the application.
6. In rejoinder, counsel for the 1<sup>st</sup> Respondent submitted that they had not taken a different path. Adding that in their 1<sup>st</sup> affidavit, they have given half information on the status of the suit land whereas in the 2<sup>nd</sup> affidavit contains full information on the renewal of the lease, and it is only the 1<sup>st</sup> Respondent which could give the said information that is crucial in dispensing justice.
7. I have considered that the directions on the hearing of the suit were given on 19.9.2023 of which, parties were to file their submissions based on the affidavits filed. In the 1<sup>st</sup> affidavit, the 1<sup>st</sup> respondent avers that the petitioners are strangers to the suit land which was initially registered to one Ali Sher son of Noormohamed, while in the affidavit of 16.10.2023, they allude to the registration of the land in favour of Gregory Ndambuki Muoki.
8. It is noted that both affidavits have been sworn by the same deponent, and that the 1<sup>st</sup> respondent claims that the earlier one only gives half information while the latter has full particulars. Further, I have taken into consideration that both affidavits were also sworn just few days apart. In the circumstances, I find no justification for the prayer to abandon one of the affidavits. In any event, parties have filed their submissions based on what has so far been filed, including the earlier affidavit of the 1<sup>st</sup> Respondent.
9. I opine that both affidavits should remain on record, hence the application to expunge the earlier affidavit is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF DECEMBER, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

M/s Mwikali holding brief for Mwendwa for Petitioner

Njuguna for 1<sup>st</sup> Respondent

Motari for 2<sup>nd</sup> & 3<sup>rd</sup> Defendants

