



Cheraga alias Emily Chelagat Tarus v Seurey & another (Environment & Land Case 92 of 2021) [2022] KEELC 2796 (KLR) (30 June 2022) (Ruling)

Neutral citation: [2022] KEELC 2796 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 92 OF 2021**

MN MWANYALE, J

JUNE 30, 2022

BETWEEN

EMILY CHERAGA ALIAS EMILY CHELAGAT TARUS PLAINTIFF

AND

VINCENT KIBOR SEUREY 1ST DEFENDANT

NANDI DISTRICT LAND REGISTRAR 2ND DEFENDANT

RULING

1. The 1st Defendant through a Notice of Motion dated February 28, 2022, brought under Order 40 Rules 6 and 7, Order 51 Rule 1 of the *Civil Procedure Rules* and Sections 3A and 80 of the *Civil Procedure Act* as well as all enabling provision of the law seeks the following orders: -
 - a. Spent
 - b. That the Honourable Court be pleased to vacate, set aside and/or vary its orders made on 29th January, 2013.
 - c. That the costs of this application be borne by the Defendant.
2. The application is premised on the grounds on the face of the application. The grounds are that the Plaintiff has not taken any step to prosecute the case since October 1, 2013 when the matter was partially heard.
3. According to the 1st Defendant interim orders issued on January 29, 2013 against the Defendant ahs been abused by the Plaintiff who destroyed the 1st Defendant's indigenous trees.
4. The 1st Defendant contends that the said orders have been in force for over nine (9) years contrary to the provisions of the Law that they should exist for only one (1) year unless extended by Court.



5. The application is supported by the Affidavit of Vincent Kibor Seurey the 1st Defendant herein. He indicates that the Plaintiff was issued interim orders vide ruling delivered on January 29, 2013 which orders have been in force for over 9 years contrary to the law.
6. The 1st Defendant further avers that the Plaintiff has abused the said interim orders by cutting down trees belonging to the 1st Defendant and selling or burning charcoal for sale. He also alleges that the Plaintiff has blocked him from accessing his water supply point.
7. By an order made on April 4, 2022, I directed that the application be served upon the Respondents who in turn shall file respective responses within 14 days after service and leave to the Applicant to file further that the application be canvassed by way of written submissions which submissions ought to be on record by May 31, 2022.
8. Upon perusal of the Court file, it is apparent that none of the Respondents filed responses neither did any party file submissions in respect to the application. Nevertheless, I proceed to render my determination as hereunder.

Analysis and Determination: -

9. I have read through the application dated February 28, brought under Order 40 Rules 6 and 7 which provide that: -
 6. Lapse of injunction (Order 40, Rule 6) where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the Court orders otherwise.
 7. Order for injunction may be discharged, varied, or set aside, (Order 40, Rule 7). Any order for an injunction may be discharged, or varied, or set aside by the Court on application made thereto by any party dissatisfied with such order.”
10. From the Court, it is evidence that the Court on January 29, 2013 issued the following orders: -
 - a. That the Defendant be restrained from entering into possession, leasing or any other way interfering with the occupation of the Plaintiff in the land parcel Nandi/lolkeringet/86 until the final determination of this suit.
 - b. That an order of inhibition is hereby issued inhibiting the registration of any dealing with the land parcel Nandi/lolkeringet/86 until such further orders of the Court.
 - c. That the Lands Registrar Nandi District be served with this order and do forthwith proceed to register the said inhabitation on the title of the land parcel Nandi/lolkeringet/86 and the said inhabitation to remain so registered until such further orders of the Court.
 - d. That costs of this application be in the cause.
11. The Court also notes from the record that the evidence of the Plaintiff was taken on October 1, 2013 before the Plaintiff's Advocate moved to amend the plaint therefore re-opening pre-trials. It is also evidence from the record that both Advocates for the Plaintiff and Defendants on diverse dates made reference to succession cause No. 23 of 1990 which was pending before the High Court. As a result of the succession cause, this matter was mentioned severally for directions and/or to confirm status of the Succession Cause as it formed the basis of the 1st Defendant's Counter – Claim as alleged by Plaintiff's Advocates in the Proceedings.



12. It is important to point out that the Court gave orders on January 19, 2017 to the effect that; -
 1. That the Plaintiff's application dated December 6, 2016 (for stay of proceedings) is hereby fixed for hearing on February 15, 2017.
 2. That in the meantime, the subject suit land be preserved. There should be no destruction of trees by either party."
13. This clearly indicates that apart from the succession cause, there were interim applications in between proceedings including an application by the Plaintiff to amend plaint which in turn affected and/or delayed further hearing of the matter.
14. In view of these glaring developments from the Court records, I am not convinced that the Plaintiff has taken no step to prosecute the matter since October 1, 2013 when it was partially heard. I however take note of the period the matter has been pending before Court.
15. I will in the circumstances not vacate, set aside and/or vary orders made on January 29, 2013 but maintain as ordered by the Court on January 19, 2017, that no trees shall be destroyed. However, I direct that the Plaintiff do fast track the matter by ensuring that the suit is fixed for hearing not later than 90 days from today. Failure to do so, the orders made on January 29, 2013 shall stand vacated after lapse of 90 days from today.
16. Costs shall be in the cause.
17. It is so ordered.

DATED AND DELIVERED IN KAPSABET THIS 30TH DAY OF JUNE, 2022.

HON. M. N. MWANYALE,

JUDGE

In the presence of;

No appearance for the parties

Copy of Ruling to be emailed to both Counsels on record

