



**Mati & another v Mati & 2 others (Environment & Land Case
15 of 2021) [2022] KEELC 15670 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 15670 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE 15 OF 2021**

AE DENA, J

JUNE 9, 2022

BETWEEN

FLORINE KARIMI MATI 1ST PLAINTIFF

DAVID KARIUKI MBUGUA 2ND PLAINTIFF

AND

ERICK MUNENE MATI 1ST DEFENDANT

HOUSING FINANCE COMPANY OF KENYA 2ND DEFENDANT

LAND REGISTRAR KWALE 3RD DEFENDANT

RULING

1. This suit is partly heard. The Plaintiff testified on May 23, 2022 virtually as she resides in the United States. The matter was fixed for further hearing on July 6, 2022. Mrs Njau appearing for the 3rd Defendant informed the court that there was pending Court of Appeal Civil Suit No 312 of 2012 where the subject matter is LR 13433 and the mother title of the suit properties herein among others. That the said court has issued an injunction stopping any dealings with the subdivisions including proceeding in any matters related thereto. Further that the Plaintiff were defendants in the said suit subject of the appeal. The court adjourned the hearing to enable Ms Njau present documents in respect of the said appeal for consideration by this court and which she complied albeit after some time.
2. On October 19, 2022 I invited parties to submit on the import of the appeal case and the orders issued to these proceedings. Mr Omondi appearing for the Plaintiff submitted that the issues for consideration in the court of appeal (ELC 113 of 2015) is whether a settlement scheme can be created from private property. That the issues in the present suit were on fraudulent acquisition and charging of the suit properties by the Defendant and for the 1st Defendants title to be cancelled. Consequently, the outcome of the appeal would not affect the present suit. It was argued further that should the Attorney General succeed in the appeal against Emfil Ltd the suit property herein will still remain in the



name of the 1st defendant. He went on to add that were the Plaintiff to succeed in the present suit then they will have capacity to be enjoined in the appeal. That there will be no prejudice to the Defendants nor will it be an embarrassment to the court if it finds in favor of the Plaintiff.

3. Ms Kaguri for the 2nd Defendant was of the same view with Mrs Njau that the present proceedings be stayed pending the determination of the appeal since the reliefs sought by the Plaintiff herein are for cancelation of title, injunction and declarations. That upon comparison of the complaints in both cases parcel No 184 the suit property herein has been listed and the defendants were listed as being the 390-392nd defendants. For the parcel No 21 they were the 69-74th defendants. That the order issued by the appellate court restrained dealings against the properties the two parcels herein included. She argued that if this court determined this matter its orders will be in futility because the outcome of the appeal is unknown. That the court of appeal decision is critical to establish whether the two properties subject of this suit ought to have been subdivided in the first instance or if they should have been maintained as Emfil Ltd property. She contended that judicial time ought to be used wisely.
4. Mrs Waswa reiterated that the suit should await the outcome of the appeal to avoid future confusion considering the relief being sought herein. That since there is a stay order at the court of appeal any determination in the present suit will be contrary to the said order.

Determination

5. Pursuant to the orders of the court state counsel presented the Court Order in ELC 113 of 2015 dated June 2015 Emfil Ltd Vs Hon Attorney General by Justice A.Omollo, Plaintiff filed in 2015 Emfil Ltd Vs Hon Attorney General and letter dated December 2021 from LJA Associates LLP.
6. The subject of these proceedings are suit properties Kwale/Ramisi Kinondo Settlement Scheme /21 and 184 which according to the Plaintiffs belong to them but were illegally/fraudulently transferred to the 1st defendant in collusion with the 3rd Defendant and further charged to the 2nd defendant. All the Defendants are said to have colluded. The Plaintiffs seek the following reliefs; -
 - a. Declaration that the transfer of the 1 plaintiff's parcel of land known as Kwale/ramisi Kinondo S s s/21 And The 2nd Plaintiff's Parcel Of Land Known As Kwale/ramisi Kinondo S S S/184 was null and void.
 - b. Declaration that the subsequent charge of the 1st property and 2nd property belonging to the 1st plaintiff and 2nd plaintiff respectively is defective as the chargee had a defective title hence null and void.
 - c. Cancellation of title deeds for the two title deeds from the 1st and 2nd properties in the names of the 1st defendant and there be an order compelling the 3rd defendant to issue new title deeds in the names of the 1st plaintiff and 2nd plaintiff respectively.
 - d. Declaration that the plaintiffs are not liable for the 1st defendant's loan secured from the 2nd defendant on the basis of illegally and fraudulently acquired title deeds and or interest or penalties thereof.
 - e. Permanent injunction restraining the defendants and their servants, agents, employees, auctioneers and or whomsoever acting on their behalf from alienating, selling, advertising for sale, transferring, further charging or in any other way from interfering with the plaintiffs parcel number Kwale/ramisi Kinondo S s s /21 And Kwale/ramisi Kinondo S S S/184 respectively.
 - f. Costs of the suit.



- g. Interest on above at Court rates.
- h. Any other relief this Honourable court may deem fit to grant.

7 I have considered the documents placed before this court by State counsel and the submissions of the parties. My understanding is that the two suit properties herein are subdivisions of LR 12335. That LR 12335 has been subject of various suits following the government decision to create a settlement scheme out of the same resulting into various subdivisions where titles have been issued and have changed hands including the plaintiffs herein. The litigation I will focus on is ELC 113 of 2015 Emfil Limited Vs. Attorney General which relates to the Kwale/Ramisi/Kinondo settlement scheme where the vendors of the suit properties herein feature as defendants. It is stated that judgement was entered in favor of Emfil Ltd whose effect was to revoke the titles arising from the settlement scheme. It is this judgement that the AG has appealed in the Court of appeal arguing inter alia that the properties have since been occupied by squatters. To me the judgement of the Court Appeal can go either way uphold or overturn the impugned judgement. Assuming the judgement of the superior court is upheld then all the titles for the subdivisions in 113 of 2015 will be rendered null and void. What will this mean for the present suit? It will mean the vendors mentioned in paragraph 6 of the Plaint herein did not have good title to pass to the Plaintiffs Florine Karimi Mati and David Kariuki Mbugua. The titles registered in the name of the 1st Defendant would also suffer the same fate and therefore possibly an invalid charge to the 2nd defendant. This also speaks to the reliefs the Plaintiffs seek in the present suit. To pick just but one prayer (c) which seeks the cancelation of title in the name of the 1st defendant and rectification of the register to revert the same to the Plaintiffs. Will this court have capacity to grant such orders? The answer is in the negative.

8 The above therefore lends credence to the need to stay the current proceedings to await the outcome of the appeal. This is the position I would still have taken even in the absence of a stay order by the Court of Appeal had the matters been brought to the courts early attention.

9 These proceedings are hereby stayed pending the determination of the Court of Appeal in 37 of 2020 The Hon Attorney General Vs Emfil Limited & 18 Others.

10 Orders accordingly.

DELIVERED AND DATED AT KWALE THIS 9TH DAY OF JUNE, 2022

A E DENA

JUDGE

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr Omondi for the Plaintiffs

No appearance for the 1st Defendant

Ms Kaguri for the 2nd Defendant

Mrs Waswa for the 3rd Defendant

Mr Denis – Court Assistant

