



**Hells Limited v Smeth Valley Limited (Environment & Land Case E420 of 2021) [2022] KEELC 14487 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14487 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E420 OF 2021  
LN MBUGUA, J  
OCTOBER 27, 2022**

**BETWEEN**

**HELLS LIMITED ..... PLAINTIFF**

**AND**

**SMETH VALLEY LIMITED ..... DEFENDANT**

**RULING**

1. Before me is a notice of motion application dated March 28, 2022 in which the applicant /plaintiff seeks orders that the director of the defendant, one Mr. Paul Maiyo be cited for contempt of the court orders of March 3, 2022.
2. The applicant contends that the orders issued on March 3, 2022 were for maintenance of *status quo*. However, the defendant has embarked on an exercise of altering the status quo by invading the property on March 25, 2022 with goons and in company of admiration policemen where they installed a razor fence on top of the stone wall. That these actions were geared towards evicting the plaintiff's caretaker and guards from the suit land.
3. The defendant has opposed the application via the replying affidavit of his director, one Paul Maiyo dated May 27, 2022, where it is averred that the plaintiff is not in possession of the suit property. The defendant states that it is the owner of the suit premises and is also in possession of the same. That on November 30, 2021 and December 5, 2021, persons sent by plaintiff had attempted to invade the suit premises but were repulsed by defendants security guards.
4. I have perused the records and I find that on March 3, 2022, the court gave orders that;  
  
"the current status quo is the one to be maintained, the land is not to be alienated, no construction is to be undertaken on the suit land"



5. These orders were given after the earlier applications filed by each of the protagonists dated December 8, 2021 and February 24, 2022 were compromised in lieu of maintenance of status quo.
6. This is a case where both litigants are claiming ownership of the suit property, but the rather intriguing part is that both are also claiming to be in possession of the said land.
7. The Court of Appeal in the case of *Shimmers Plaza Limited V. National Bank of Kenya Limited* [2015] eKLR defined status quo as follows:

“*Status quo*” in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. We fail to see what can be ambiguous about that order”.
8. It is noted that the advocates for the parties did not elaborate to this court as to what was the current status of the land as at the time they were consenting to have their respective applications compromised on March 3, 2022. It is therefore the word of the plaintiff against that of the defendant and vice versa in so far as the occupation of the suit land is concerned. Certainly, one of them is economical with the truth.
9. As at now, this court cannot state with absolute certainty as to who is in occupation of the land or how the said land is being utilized. The best route to take is to have the matter expedited in respect of the substantive issues.
10. The application dated March 28, 2022 is therefore dismissed. Costs thereof shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Wabale for Plaintiff

Ombati for defendant

Njagi for Intended 1<sup>st</sup> and 7<sup>th</sup> Defendants

Court assistant: Eddel

