



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndaisi v Yusuf & 2 others (Environment & Land Case 813 of 2014)  
[2022] KEELC 13607 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13607 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 813 OF 2014  
LN MBUGUA, J  
OCTOBER 13, 2022**

**BETWEEN**

**SOFIA JUMA AMBARI NDAISI ..... PLAINTIFF**

**AND**

**MOHAMMED SHEIK YUSUF ..... 1<sup>ST</sup> DEFENDANT**

**EZEKIEL KIPKULEI C KOMEN ..... 2<sup>ND</sup> DEFENDANT**

**THE REGISTRAR OF TITLES ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This suit is partly heard whereby the plaintiff gave his testimony as PW1 on January 30, 2020, but he passed on thereafter on September 6, 2021. He was then substituted with the current plaintiff through an application dated November 23, 2021 which was allowed on June 15, 2022.
2. The current plaintiff filed an application dated April 28, 2022 seeking orders that one Ezekiel Kipkulei C Komen and the registrar of titles be joined in this suit as 2nd & 3rd defendants respectively. She also prays that an order of injunction be issued against the said defendants restraining them from any dealings appertaining to the land Parcel no 14720 Embakasi registered as IR No 100852 including processing or issuing leases or in any way disposing or alienating the said land.
3. The applicant has filed grounds in support of the application were she contends that the late plaintiff Ndaisi Ngonyo acquired the property on August 27, 2008, and that on July 24, 2014 the court issued an injunction against the defendant restraining him from interfering or trespassing on the suit property.
4. That when the plaintiff went to pay county rates in relation to the suit land, she found that the property account at Nairobi County offices had been altered and changed to read Ezekiel Kipkulei C Komen as the proprietor of the suit property. That further investigations at lands office revealed that vital



documents relating to the title of the suit land including documents of transfer and the green card had been fraudulently removed and replaced with letter of allotment as well as title issued to Ezekiel Kipkulei C Komen. A new lease thereof had also been prepared which was allegedly back dated to June 1, 1994.

5. The applicant contends that the fraudulent activities were instigated by Ezekiel Kipkulei C Komen and in the circumstances, the court should issue orders against the 2nd and 3rd defendants to stop their fraudulent schemes. Adding that the estate of the late Ndaisi Ngonyo stands to suffer irreparable loss if the orders sought are not granted.
6. The proposed 2nd defendant opposed the application vide a Replying Affidavit dated June 9, 2022. He contends that he is the registered owner of land parcel no 14720 having been issued with a certificate of title which he has availed as an annexure. He further avers that he has been in possession of the aforementioned parcel of land from the time it was allotted to him.
7. The 2nd respondent avers that the applicant has not exhibited any document to show that she owns the property of the 2<sup>nd</sup> respondent. Adding that the property being claimed by the plaintiff is different from his parcel.
8. The 3rd respondent was served but he never filed any response thereof.
9. The provision of order 1 rule 10 of the *Civil Procedure Rule* provides that:
  - (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
  - (3) .....
  - (4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants”.
10. In the case of *Joseph Njau King’ori vs Robert Maina Chege & 3 others* [2002] eKLR the court provided the guiding principle to be adhered to when an intending party is to be joined in a suit as follows;
  - i. He must be a necessary party.
  - ii. He must be a proper party.
  - iii. In the case of the defendant there must be a relief flowing from that of a defendant to the plaintiff.
  - iv. The ultimate order or decree cannot be enforced without his presence in the matter.
  - v. His presence is necessary to enable the court to effectively and completely to adjudicate upon and settle all questions involved in the suit.”
11. This is a situation whereby the plaintiff is alluding to fraudulent activities having been undertaken in the acquisition of documents of ownership of the suit land by the 2nd respondent. On the other hand, the 2nd respondent is giving an account of how he came to acquire his property averring that his land



is not the same as that of the plaintiff. I find that the issues of fraud and ownership cannot be dealt with at this stage, and the proper platform to adjudicate such claims is in a trial.

12. At this juncture, it is important to note that the plaintiff has claimed that the property account of the plaintiff (read Ndaisi Ngonyo) is allegedly now in the name of Ezekiel Kipkulei C Komen). It is therefore important for the proposed defendants to come on board in this suit so that the court can effectively and completely adjudicate upon and settle all the questions being raised by the plaintiff and the proposed 2nd defendant.
13. It is pertinent to note that the suit was filed close to 8 years ago and this court is not privy to what has been happening on the land. Thus the appropriate orders to give shall relate to the preservation of the land and the maintenance of status quo. In *Shimmers Plaza Limited vs. National Bank of Kenya Limited*[2015] eKLR the Court of Appeal defined status quo as follows:

“Status quo in normal English parlance means the present situation the way thing stands as at the time the order is made, the existing state of things.”

14. In the final analysis, the application dated April 28, 2022 is allowed in the following terms;
  - i. Ezekiel Kipkulei C Komen and the registrar of titles are hereby joined in this suit as the 2nd and 3rd defendants respectively.
  - ii. The plaintiff is to amend his plaint accordingly and take out and serve summons to enter appearance against the two new parties within a period of 21 days otherwise the orders given herein shall lapse.
  - iii. The 2nd and 3rd defendants are to enter appearance and file their pleadings thereof within 21 days from the date of service.
  - iv. An order is hereby issued for maintenance of status quo in relation to occupation and registration of land parcel no 14720.
  - v. An order of inhibition is to be registered against land parcel no 14720 and the 3rd defendant is directed to act accordingly.
  - vi. The costs of the current application shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N MBUGUA**

**JUDGE**

**In the presence of:-**

**M/s Njuki holding brief for Mr Kitwa for applicant/plaintiff**

**M/s Kiprop holding brief for Mutinda for defendant**

**Allan Kamau for Proposed 3rd defendant**

**Ochanda for 2nd intended respondent**

**Court assistant: Eddel/Joan**

