



Adika & 11 others v Maina & 5 others (Environment & Land Case 315 of 2014) [2022] KEELC 13418 (KLR) (7 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13418 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 315 OF 2014**

**A OMBWAYO, J
OCTOBER 7, 2022**

BETWEEN

GEORGE OMOLLO ADIKA & 11 OTHERS PLAINTIFF

AND

PAUL MAINA 1ST DEFENDANT

DISTRICT LAND REGISTRAR KISUMU 2ND DEFENDANT

CHAIR, NATIONAL LAND COMMISSION 3RD DEFENDANT

NATIONAL LAND COMMISSION 4TH DEFENDANT

ANDREW ONGUKA OMBWAYO 5TH DEFENDANT

WILKISTER AWINO OJIENDA 6TH DEFENDANT

RULING

1. On November 26, 2021 the 5th and 6th defendants requested for particulars of identification from the plaintiffs and proof of existence of the lease, and proof of any existing property rights.
2. The defendant further sought particulars for the lease, allotment letter and such interim documents. They also sought for the names of the department, the officer involved in the transaction *inter alia*.
3. The plaintiff failed to respond to the request for particulars hence the 5th and 6th defendant filed, the application dated January 14, 2022 seeking orders that the suit be struck out on grounds that the issue of ownership of property known as LR 15328, and specifically LR No 15328/12, had already been determined in a binding decision of the National Land Commission at Table 9 page 4263 Item 71 of Gazette Notice No 6863 dated July 17, 2017, which is binding as it has neither been appealed from or challenged through judicial review within the requisite period of 6 months of its determination and is otherwise in contravention of S 7 Civil Procedure Act Cap 21.



4. The applicants contend that the 1st plaintiff lacks the *locus standi* under the [Land Registration Act 2012](#) and or under property law to institute these proceedings as he has claimed that he sub-divided and sold his interest in property known as LR No 15328.
5. That the 4th plaintiff un-dated verifying, which does not disclose where it was sworn, and is unaccompanied with written authority of the other plaintiffs. Is fatally defective for contravening order 4 rule 1 (3) [Civil Rules 2010](#).
6. The suit is vexatious and otherwise an abuse of the process of this Court thereby contravening order 2 rule 15 (1) (b) and (e) [Civil Procedure Rules 2010](#) having been continued after the National Land Commission had upheld the 5th and 6th defendant's title to property known as LR 15328/12, and by extension the main lease or grant to the 1st defendant herein, in a binding decision published at Table 9 page 4263 Item 71 of Gazette Notice No 6863 dated July 17, 2017 that was arrived at lawfully upon a public hearing, in the exercise by the National Land Commission of its legal and constitutional mandate, and that this Court is barred from re-hearing the same issue.
7. The plaintiffs have failed, neglected and refused to comply with the 5th and 6th defendant's November 22, 2021, which particulars are necessary for purpose of drawing a defence and defending this suit on behalf of the 5th and 6th defendants.
8. The application is supported by the supplementary affidavit of Andrew Onguka Ombwayo who reiterates that the suit ought to be struck out on the grounds set out on the face of the application.
9. In reply, George Omollo Andike stated that the amended plaint dated November 4, 2021 is properly drawn and filed.
10. I have considered the application and response and do find the verifying affidavit to be defective as the same was not dated. However, the defect does not warrant the striking out of the suit as doing so would be so draconian to the plaintiffs. I do order that the plaintiff do file a verifying affidavit properly executed within the next 10 day after this ruling.
11. On the issue of request of particulars I do find that the same amounts to a fishing expedition as the plaintiff has complied with order 3 of the Civil Procedure Rules hence the matter ought to be set down for hearing.
12. Pleadings and particulars are supposed to furnish a statement of the case sufficiently clear to allow the other party a fair opportunity to meet it and define the issues for decision in the litigation and thereby enable the relevance and admissibility of evidence to be determined at the trial and further they give a defendant an understanding of a plaintiff's claim in aid of the defendant's right to make a payment into court.: [Dare v Pulham](#) (1982) 148 CLR 658 at 664.
13. The function of pleadings is to state with sufficient clarity the case that must be met ... In this way, pleadings serve to ensure the basic requirement of procedural fairness that a party should have the opportunity of meeting the case against him or her and, incidentally, to define the issues for decision.: [Banque Commerciale SA, En Liquidation v Akbil Holdings Ltd](#) (1990) 169 CLR 279 at 286.
14. Particulars fulfil an important function in the conduct of litigation. They define the issues to be tried and enable the parties to know what evidence it will be necessary to have available and to avoid taking up time with questions that are not in dispute. On the one hand they prevent the injustice that may occur when a party is taken by surprise; on the other they save expense by keeping the conduct of the case within due bounds.: [Bailey v Federal Commissioner of Taxation](#) (1977) 136 CLR 214 at 219.



15. It is no argument that the opposite party knows the facts. It is a misapprehension to think that the only function of particulars is to reveal to a party facts of whose existence he is unaware. As I have indicated, particulars have the important function of informing a party of the nature of the case he has to meet and of limiting the issues of fact to be investigated by the court. In this case I do find that the plaintiff has disclosed all relevant facts relevant to the case and that will ensure that the defendants are not taken by surprise.
16. On the issue of the *locus standi* of the 1st defendant, I do find that the suit property was initially registered in his name and he subdivide the same and caused it to be registered in the names of the other defendants hence he has the locus standi to sue the defendants.
17. On the contention that the issue of the ownership of the suit properties has been determined by the National Land Commission, it is trite that the role to be played by the National Land Commission on one hand and the Environment and Land Court and subordinate courts on the other hand are clearly delineated by law. The jurisdiction of National Land Commission to review grants of public land, which in any event lapsed on May ,2017, did not extend to dealing with interests over private land. That fell within the domain of the Environment and Land Court and the subordinate courts. Moreover, I have looked at the alleged determination and do find that the same is a recommendation. I do disallow the application with costs in the cause. The matter should be set down for hearing after compliance.

DATED AT KISUMU THIS 7TH DAY OF OCTOBER 2022

A OMBWAYO

JUDGE

