



**Patani & another v Patani & another (Environment & Land Case
141 of 2019) [2022] KEELC 15623 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15623 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 141 OF 2019
LN MBUGUA, J
DECEMBER 8, 2022**

BETWEEN

SELINA RAMNIKLAL PATANI 1ST PLAINTIFF

ASHIT RAMNIKLAL PATANI 2ND PLAINTIFF

AND

DIVYESH MANSUKHLAL PATANI 1ST DEFENDANT

AMITKUMAR MANSUKHLAL PATANI 2ND DEFENDANT

RULING

1. Before me is a Notice of Motion Application dated March 30, 2022 in which the defendants seek the following orders.
 - a. Spent.
 - b. That this Honourable Court do enter Judgment in favour of the 1st and 2nd Respondents as the 1st and 2nd Applicants herein admit the provisions of the MOU entered between them and the Respondents of July 13, 2012 and which provisions form the basis of the Respondent's suit against the Applicants.
 - c. That This Honourable Court do hereby order that since the Applicants have satisfied and adjusted the Respondent's suit substantially, the said compromise or satisfaction by the Applicants of the Respondent's suit be recorded and judgment entered in favour of the Respondents in terms of the said MOU.
 - d. That since the substratum of the Respondent's suit wholly hinges on the said MOU, this Honourable court do order that the dispute between the parties is a commercial dispute and that any subsequent steps taken herein should be referred to the commercial division of the High Court of Kenya.



- e. That this court do hereby issue an order that as the Respondents claim has been admitted and/or compromised this suit be hereby marked as withdrawn.
 - f. That costs of this application be provided for.
2. The application is premised on the grounds set out on the face of the application and on the contents of the affidavit of the 2nd defendant.
 3. The applicants contend that they are first cousins of the plaintiffs and the suit property is an inheritance from their fathers.
 4. The applicants further contend that they have had several meetings and agreements culminating in the payment of ksh 3,175,000 in total to the plaintiffs towards settlement of the MOU.
 5. The 2nd plaintiff on the other hand has sworn a Replying Affidavit dated May 17, 2022 where he contends that as per their MOU, the plaintiffs were to relinquish their interest in the suit property for a consideration of ksh 8,000,000, but the applicant, did not honour the said MOU hence the filing of the suit. The deponent avers that indeed Judgment can be entered in their favour since; (See paragraph 7, 8, 9 and 10 of the affidavit,) “ the Defendants have now filed an Application dated March 30, 2022 seeking that Judgment be entered in terms of the MoU and the provisions of the Memorandum of Understanding be admitted and which in part we support in having the Prayers as sought in the Plaint to declare the MOU now non-operational and void to be entered. That further, we would appreciate judgment be entered in terms of Prayer 2 of the Plaint for the Defendants/ Respondents to provide the Audited Accounts as prayed. That the instant dispute falls within the ambit of this Court’s jurisdiction as provided for in Section 13 of the *Environment and Land Court Act*. The contents and execution of the Memorandum of Understanding cannot oust this Court’s jurisdiction to entertain this suit in relation to the suit property. We therefore pray that Prayer 3 of the Plaint be equally allowed as requested by the Defendants/Respondents to have an Order for Sale of Property granted. We therefor support Judgment be entered in our favour as prayed and as requested by the Defendant”. That the Defendant’s /Applicants’ Application on the other prayers 3,4 and 5 are misplaced, frivolous and an abuse of the Court process and cannot be granted in favour of the Defendant”!.
 6. The court gave directions for parties to file submissions of which only the Respondent/ plaintiffs complied.
 7. I have considered all the arguments raised herein. The issue for determination is whether the suit should be compromised and withdrawn and then transferred to commercial court as prayed by the defendants.
 8. Firstly, I find that the admissions being made by the applicants are ambiguous. The applicants’ pleadings (statement of defences) cannot be traced in the file hence their formal response to the plaint cannot be discerned. A perusal of the MOU reveals that there is no indication of timelines for the various steps of compliance that were to be undertaken by the parties.
 9. The question is; do the applicants admit the claim of the respondent as set out in the plaint, that is; the MOU to be declared null and void and that the suit land be sold and the proceeds to be distributed equally? As rightly submitted by the Respondent,

“A compromise means a settlement of differences by mutual concessions on agreement reached by adjusting of conflicting claims and principles by reciprocal modification of demands”.

This however doesn’t appear to be the situation in the



current dispute.

10. Many a times, it has been held that courts cannot re-write contracts for the parties and courts are also bound by what parties agreed to. The Court of Appeal in the case of *Five Forty Aviation Limited v Erwan Lanoe* [2019] eKLR cited in agreement the case of *Pius Kimaiyo Langat versus Co-operative Bank of Kenya Ltd* [2017] eKLR which stated that;

“We are alive to the hallowed legal maxim that it is not the business of Courts to rewrite contracts between parties. They are bound by the terms of their contracts, unless coercion, Fraud or undue influence are pleaded and proved.”

11. A perusal of the claims of the protagonists, particularly the contents of paragraph 7-10 of the plaintiff's replying affidavit is a clear tell tale sign that the parties are pushing this court to re-write the contract!. That is certainly not tenable. If the parties have indeed reached a settlement, what is so difficult in filing a consent to that effect, after all, each one has an advocate to guide them in such a process. As at now, I find that there is no certainty as to the terms of a settlement, to warrant the prayer for entry of Judgment.
12. Secondly I find that the applicants are blowing hot and cold in relation to the claim that the matter doesn't fall under jurisdiction of this court and that it should go to commercial court. The applicants cannot be seeking entry of judgment in this court while at the same time, they want the matter to be heard by the commercial court.
13. Thirdly I find that both parties do admit that the suit property is jointly owned by deceased persons. The parties have not availed information as to whether they have capacity to deal with the suit parcels. As such, this court would be hesitant to grant any orders which may amount to inter-meddling with the estate of deceased persons.
14. As at now, I find that the application dated March 30, 2022 as well as the Notice on Preliminary Objection dated January 27, 2022 are unmerited and are hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Arum holding brief for Nzoakyo for Plaintiff/Respondent

M/s Nyambuto for Defendant applicants

Court Assistant: Eddel/Vanilla

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