



**Watamu Sailfish Limited v Tinga & 2 others; Landsey Limited (Interested Party)  
(Environment & Land Case 55 of 2021) [2025] KEELC 1275 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1275 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 55 OF 2021  
EK MAKORI, J  
MARCH 13, 2025**

**BETWEEN**

**WATAMU SAILFISH LIMITED ..... PLAINTIFF**

**AND**

**EMMANUEL CHARO TINGA ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LANDS REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**LANDSEY LIMITED ..... INTERESTED PARTY**

**RULING**

1. The application before this Honourable Court is dated 27<sup>th</sup> February 2024. The orders sought herein are as follows:
  - a. Orders of maintaining the status quo;
  - b. Orders of joinder of the intended Interested Party as a party in these proceedings;
  - c. Citing 1<sup>st</sup> Defendant/ Respondent for contempt;
  - d. Costs.
2. The application was disposed of by way of written submissions.
3. From the materials and submissions placed before me, I frame the issues for this court's decision as whether the court should order the maintenance of the status quo, whether the intended Interested Party should be joined in these proceedings, whether the Respondents should be punished for contempt and who should bear costs.



4. In the instant case, this court (Odeny J. DR.), in the ruling of 28<sup>th</sup> October 2021, issued an order for the status quo pending the hearing and determination of the main suit. It is reported as *Watamu Sailfish Limited v Emmanuel Charo Tinga & 2 others* [2021] KEELC 1311 (KLR). This is what the court said:

“From the pleadings and the averments of the parties it is evident that there is a valid issue to be determined and that the substratum of the case should be preserved in the interest of justice.

Order 40 Rule 1 of the Civil Procedure Rules requires proof that the suit property in dispute is in a danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property, the court is in such situation obliged to grant a temporary injunction to restrain such acts.

In the current case, is the property in dispute in danger of being alienated or sold to other third parties. Is the property likely to be wasted? There are two conflicting positions on the what is happening on the property. The plaintiff says that there are developments being offered for sale and the 1<sup>st</sup> defendant says the contrary that there are no developments. Which version should the court believe.

If there is no development as the 1<sup>st</sup> defendant claims, then there would be no harm if the court orders that a status quo be maintained pending the hearing and determination of this suit to preserve the substratum of the case. The parties should fast track the hearing of the main suit.

The final orders are the 1<sup>st</sup> defendant’s preliminary objection is hereby dismissed with costs to the plaintiff. An order of status quo is hereby issued pending the hearing and determination of the main suit. Parties to fast track the hearing of the main suit. Costs of the application in the cause.”

5. The Applicant aver that Black’s Law Dictionary, Butterworth’s 9th Edition, defines status quo as “the situation as it exists.” Therefore, the purpose of status quo orders is to maintain the circumstances as they existed at the time of the order’s issuance.
6. *Republic v National Environment Tribunal Exparte Palm Homes Ltd & another* [2013] eKLR, Odunga J. stated that:

“when a court of law orders or a statute ordains that the status quo be maintained it is expected that the circumstances as at the time when the orders is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs. Status quo must therefore be interpreted with respect to existing factual scenario...”

7. Further in *Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Ltd & another* [202] eKLR it was stated that:

“By maintaining the status quo, the Court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering negatively its proposed decision ...”



8. Applicant aver that while these orders were still in effect, the 1<sup>st</sup> Defendant transferred the land to the intended Interested Party, and the property is now registered in the Interested Party's name. It is very clear that the 1<sup>st</sup> Defendant is trying all means to defeat the ends of justice and as such, there is no telling what other action he will take to ensure that the suit property has changed hands as many times as possible and justice is not done. Even though the court had already issued status quo orders in October 2021, it is essential to note that the status of the suit property has changed. It is, therefore, only fair and to maintain the status quo to avoid or prevent any further dealings, to ensure that the substratum of the subject matter is not completely eroded, and to prevent any further prejudice on the Applicant's part.
9. Regarding the joinder, the Applicant believes that the Intended Interested Party must be joined as a party in this suit. This belief is based on the fact that the suit property was transferred to the intended Interested Party during the pendency of this suit and while there were orders of status quo in place. This transfer, which violated the court's orders, is a crucial development in the case and underscores the need for the intended Interested Party to be joined as a party.
10. Order 1 Rule 3 of the Civil Procedure Rules 2010 provides that:

“ All parties may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suit were brought against such persons any common question of law or fact would arise”.
11. In *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR Mativo J. observed as follows:

“The test is not whether the joinder of the person proposed to be added as an Interested Party would be according to or against the wishes of the petitioner or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the petitioner. It is whether the intended Interested Party has an identifiable stake, or a legal interest or duty in the proceedings. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an Interested Party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is a mandate of the court that as far as possible all matters in controversy between the parties should be completely and finally determined and all multiplicities of legal proceedings concerning any of the matters be avoided. In this regard, it would be appropriate and in the interest of justice that all matters touching and concerning the subject matter of the suit in the case at hand be determined finally and completely to avoid litigating over the same matters again.”
12. The Applicant believes the Interested Party has a stake in the outcome of this suit because the suit property is now in his name and is currently in his occupation. Therefore, it needs to be joined to this suit as orders made in this suit will affect it. It is, thus, a necessary party as its joinder is necessary to determine all the issues in the suit.



13. On contempt the Applicant asserts that The High Court in *Samwel M.N. Mweru & others v National Land Commission & 2 others* [2020] eKLR stated that:

“It is an established principle of law that in order to succeed in Civil contempt proceedings the applicant has to prove (i) the terms of the order (ii) knowledge of the terms by the Respondent (iii) Failure by the Respondent to comply with the terms of the order...”
14. In this case, the Applicant insists that he filed an application for injunction dated 2<sup>nd</sup> June 2021, and the 1<sup>st</sup> Defendant, through his advocates, then on record, filed a response thereto dated 4<sup>th</sup> August 2021 together with a notice of Preliminary Objection dated 30<sup>th</sup> June 2021. The Applicant filed a supplementary affidavit dated 26<sup>th</sup> August 2021, and both parties filed submissions thereto. The 1<sup>st</sup> Defendant’s submissions are dated 23<sup>rd</sup> September 2021. The Ruling in this matter was delivered electronically on 29<sup>th</sup> October 2021 through the official email of ELC Court as shown in Annexure A2 of the Applicant’s further affidavit sworn on 24<sup>th</sup> September 2024; which clearly shows that it was served upon all the parties. The terms of the court’s orders were very clear, and it was stated that the status quo should be maintained pending the hearing and determination of the main suit. Before the hearing and determination of this suit, the 1<sup>st</sup> Defendant with full knowledge of the order proceeded to transfer the property to the Interested Party. Even though the Interested Party claimed that the transfer process had commenced before issuance of the said order, it was the 1<sup>st</sup> Defendant’s duty to inform him that the said orders had been issued, significantly since the transfer had not yet been effected when the order was issued. It is very clear from the foregoing that the terms of the court order were clear and unambiguous, that the 1<sup>st</sup> Defendant was made aware of the order, and that the 1<sup>st</sup> Defendant failed to comply with it.
15. The Applicant seeks the 1<sup>st</sup> Defendant to be summoned to show cause why he should not be committed to civil jail for contempt of the orders of this honourable court.
16. In a rejoinder to the issues raised in the application, both the 1<sup>st</sup> Defendant and the intended Interested Party raise the issue that one Joseph Josseppe Ngumbao Kiponda who has sworn the affidavit in support of the application has not sought authority to be allowed to act as an attorney for the Plaintiffs.
17. The 1<sup>st</sup> Defendant contends that the transfer of the suit property to the Interested Party was well before this court issued the orders. 1<sup>st</sup> Defendant further asserts that the status quo orders issued by this court were not descriptive concerning the status of the suit property in situ and within the four corners of the decision in *Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others* [2015] KEHC 5204 (KLR), which enunciated that while issuing status quo orders, the terms must be laid unembellished by the parties or the court to avoid multiple interpretations by the parties.
18. The 1<sup>st</sup> Defendant and the intended Interested Party believe that the joinder of the said party has not been laid bare.
19. On contempt, since the status quo orders were not clear and descriptive, the status of the suit property and service on the parties had not been proved, and this court could not commence contempt proceedings against the Respondents.
20. From the record, and as highlighted above, this court issued initial status quo orders to preserve the suit’s substratum on 28<sup>th</sup> October 2021. It will seem that a process of transferring the suit property had commenced, resulting in the transfer of the suit property to the Interested Party by the 1<sup>st</sup> Defendant. The transfer instrument was signed on 1<sup>st</sup> August 2020 and executed on 31<sup>st</sup> August 2020 well before this court issued the status quo orders.



21. In *Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others* [2015] KEHC 5204 (KLR) Onguto J. enunciated the parameters of what amounts to status quo in this manner:

“Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts. This is achieved through the issuance of formal prohibitory injunctive orders or through conservatory orders or stay orders. Such status quo orders do not extend to future circumstances, however unlikely. “Status quo” in this respect, as maintained by an injunctive or conservatory or stay order, is the then existing state of affairs. Often the order is very specific and descriptive in such instances and parties are expected, nay bound, to observe the order. The order will often be issued after a balance of all the factors and circumstances. As was stated by Lord Diplock in *American Cyanid Co.–v- Ethicon* [1975] 1 All ER 504 at 511:

“where factors appear to be evenly balanced, it is a counsel of prudence to take such measures as are calculated to preserve the status quo.....”

The second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts’ further orders. It is intended to also freeze the state of affairs. State of affairs however do not always remain static, so it is always crucial for the court to be very specific and neat in its description of what state of affairs is to be preserved. Ordinarily where it is the court that has prompted a status quo order or has prompted the parties to it, it is more appropriate and exceedingly relevant to describe clearly the state of affairs at the time the order for status quo is issued. It is undesirable to simply make an order of status quo to be maintained without clearly describing the state of affairs then existing and being preserved. Assistance of the counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind.

It is certainly worth pointing out that as such status quo orders are prompted by the court to assist in case management, the court must always keep an eye on the fundamentals. Firstly, when it is of no assistance there is no need to invoke it. There must be gain in its imposition. It would therefore be important for the court to know and precisely describe the state of affairs being kept in situ.”

22. It will seem to me then that when this court was making the status quo orders, which were dependent on the averment of the parties, the state of affairs on the ground was different from what is being raised now. Parties did not assist the court in reaching a proper description of what the status quo looked like and the actual substratum of the suit property then. The court was told there was no imminent danger of transfer when the transfer had already happened.



23. From the Preliminary objection raised, the capacity of one Joseph Joseppe Ngumbao Kiponda was raised, the court correctly ruled that the challenge could be surmounted in the future before the hearing:

“In the Mukisa Biscuits Manufacturing Co. Ltd. v West End Distributors Limited (1969) EA 696, 701 case preliminary objections cannot be successfully raised where what is sought is the exercise of judicial discretion. Newbold P explained thus:

“ A Preliminary point is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”

From the plaint and the affidavits in support of the case and the notice of motion, it clear that the plaintiff has deponed that he is one of the directors. The plaintiff deponed that they were ready to comply with the provision and such failure should not be fatal to the plaintiff's case.

I find that the preliminary objection lacks merit and is therefore dismissed with costs to the plaintiff.” (underlined for emphasis)

24. In its ruling, the court expected parties to comply with preliminaries, such as the issue of representation and capacity to act, before the matter was set down for a hearing.
25. The status quo issued by this court on 28<sup>th</sup> October 2021 was not descriptive of how the ground and the suit property were to look, and a further status quo order by this court will convolute this suit further.
26. Joseph Joseppe Ngumbao Kiponda's capacity remains shaky—it will seem that his capacity to represent the Plaintiffs in these proceedings remains the same as on 28<sup>th</sup> October 2021.
27. The expansive orders sought in the current application are then untenable. If allowed, they will totally blur the already lost substratum of the suit itself. The application is hereby dismissed with costs.
28. The Plaintiff should perhaps seek to amend the plaint and introduce the other parties as intended by the current application or withdraw and commence a new suit.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Ms.Mulemia for Intended Interested Party

Happy: Court Assistant

In the Absence of:

Ms. Mwanja for the Applicant

Mr. Mbura for the 1<sup>st</sup> Respondent.

