



**M'Ikunyua v Mwangi (Environment and Land Appeal E122 of 2022)
[2024] KEELC 649 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 649 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E122 OF 2022**

J OMANGE, J

FEBRUARY 8, 2024

BETWEEN

FRANCIS KIRIMA M'IKUNYUA APPELLANT

AND

ELIZAPHAN KANYORO MWANGI RESPONDENT

*(Being an appeal from the Ruling and order delivered on 21st November 2022 by
Hon. S. A. Opande PM in Milimani Commercial Court Civil Suit No 422 of 2016)*

RULING

1. The Appellant/ Applicant *vide* application dated 19th December, 2022 sought an application seeking that status quo be maintained in respect of Nairobi Block 122/500 pending the hearing and determination of the Appeal herein. The application is brought on the grounds that the Appellants application for review in the lower court, was dismissed prompting the filing of this appeal. The Applicant s case is that the learned trial magistrate erred in refusing to set aside the *ex parte* Judgement.
2. The Respondent filed a Replying Affidavit in which he pointed out that the appellant had waited nearly two years to file the appeal. He also brought to the attention of the court the instances that the Appellant had delayed hearing of the case for one reason or another. He narrated to the court the circumstances under which the matter proceeded *ex parte* in the lower court insisting that the appellant had deliberately delayed the matter in the lower court through filing myriad applications.
3. The appellant in his submissions raised one issue for determination and that is whether the application to maintain status quo is merited. Counsel submitted that an order seeking for status quo is different from an order seeking injunctive orders as an Applicant need not prove a prima facie case. Counsel for the Applicant further stated that the purpose of a status quo order is meant to preserve the existing state of affairs and quoted a number of cases including: *Republic Vs National Land Environment Tribunal*



Ex parte Palm Homes Limited & Another (2013) eKLR, *Kenya Airline Pilots Association (KALPAO Vs Cooperative Bank of Kenya Limited & Another* (2020) eKLR .

4. Lastly the Applicant submitted that an order for status quo can be issued by a court on its own motion where it seeks to preserve the subject matter of the property for case management reasons and where both parties have interests to protect such as in the present case where the Applicant is in possession and Respondent is the registered owner. The Applicant argued that no prejudice will be occasioned to the Respondent should the current state of affairs persist by granting of the order.
5. Counsel for the Respondent submitted that the Applicant in seeking status quo orders is abusing the court process and seeks to frustrate and embarrass the court as status quo orders are very ambiguous unless they specifically state what the status to be maintained is. Counsel cited the supreme court decision of *Bia Tosha Distributors Vs Kenya Breweries Limited & 6 Others* petition 15 of 2020(2023)KESC 14 (KLR) Constitutional judicial review (17th February 2023).
6. It was submitted that the Applicant needs to be stopped from bringing applications in court over the same subject matter that has already been adjudicated on as was held in the case of *Uhuru Highway Development Limited Vs Central bank of Kenya, Exchange Bank Limited (involuntary liquidation) and Kamlesh Patni* in which the court of appeal stated that there must be an end to interlocutory applications as there is an end to litigation.
7. The issue before the court for determination is whether an order should issue maintaining the status quo. In the case of *Republic –vs- The Chairperson Business Premises Rent Tribunal at Mombasa (Bench Mochache) Exparte Baobab Beach Resort (Mombasa Limited) & Monica Clara Schriel* Mombasa Misc. Civil Application (JR) No.26 of 2010 Muriithi J defined a status quo order as an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In this case, the Judge found that a status quo order is distinguishable from an injunction which is a discretionary remedy granted upon establishment of a prima facie case.
8. I agree with the interpretation of the learned Judge, but hasten to add that each case must be determined on its own merits and considering the circumstances of each case, more so in a case such as this where there is a party who has obtained a Judgement in the lower court which they should benefit from.
9. A basic requirement of an application seeking to maintain the status quo is that the Applicant must succinctly indicate the status quo which is sought to be maintained. The application must bring the full picture of the facts that exist so that the court is able to make an informed decision. The affidavit in support of the application is then of great importance. In the application and in the affidavit in support of the application the appellant states that he has since been issued with a vacation notice. He states he will thus suffer loss. The appellant is not candid on the date he was issued with the Notice to vacate. However, in the Replying Affidavit the Respondent s clarify the notice was issued way back in January 2022. The Appellants filed this application a whole year later.
10. In the affidavit in support of the application dated 28th August, 2023 the appellant makes the situation even more complicated as he indicates that the Respondent is trying to evict him and his tenant. It is therefore not clear if he is the one on the property or it is his tenant. In view of this confusion it is not clear what the status sought to be maintained is. In the absence of such clarity any status quo orders would no doubt be an embarrassment to the court which would have to verify the current status after issuing the orders.
11. I therefore find that this application is not merited and is dismissed with costs.



12. The Appellant had also filed application dated 28th August, 2023 seeking a date for directions on the hearing and determination of the Appeal contending that his efforts to obtain a hearing date for the appeal have not been successful. The appellant deserves a chance to ventilate his appeal. As such the court will after delivery of this Ruling issue a date for mention when directions on the appeal will be issued.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 8TH DAY OF FEBRUARY 2024.

JUDY OMANGE

JUDGE

In the presence of: -

Mr. Kanyoro for Appellant/Applicant

Mr. Gakunga for Respondent

Steve - Court Assistant

