



REPUBLIC OF KENYA



**Ali (Suing as Personal & Legal Representative of the Estate of Habiba Hussein Siko – Deceased) v Safe (Environment and Land Appeal 010 of 2021) [2024] KEELC 3619 (KLR) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 3619 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND APPEAL 010 OF 2021**

**PM NJOROGE, J**

**MAY 6, 2024**

**BETWEEN**

**HADIJA HUSSEIN ALI (SUING AS PERSONAL & LEGAL REPRESENTATIVE OF THE ESTATE OF HABIBA HUSSEIN SIKO – DECEASED) ..... APPELLANT**

**AND**

**ADAN TELE SAFE ..... RESPONDENT**

**JUDGMENT**

1. In His plaint dated 16<sup>th</sup> August, 2021 the plaintiff prays for judgment against the defendants jointly and severally for:
  - a. A permanent injunction restraining the Defendants by themselves, servants, agents or anyone claiming under them or from them, otherwise howsoever from entering into the suit land, interfering with the Plaintiff's right of occupation, possession and or use of Isiolo Township Block 1/159 or any part thereof.
  - b. General damages and exemplary damages for trespass.
  - c. Costs of this suit.
  - d. Interest on (c) and (d) above at court rates.
2. The court notes that for several times the plaintiff and his advocates were not in court when this matter was being handled. Examples of dates when the plaintiff and his advocates were not in court despite knowledge that the matter was being handled are 5/2/2024, 4/3/2024, 12/3/2024 and 8/4/2024.
3. On 12/3/2024, Advocate Ondari plaintiff's advocate asked the court to dismiss this suit for lack of prosecution.



This court refused to dismiss the suit but directed that the Plaintiff's Advocate be served with the order that the suit would be heard on 8/4/2024.

On 8/4/2024, once again the plaintiff and his advocate did not show up in court. Having satisfied itself that the plaintiff was aware of that days hearing date allowed the case to proceed to hearing albeit in the absence of the plaintiff and his advocate. This decision was made in consonance with the provisions of Order 12 of the Civil Procedure Rules and Specifically rule 2 thereof.

4. DW1, Mohamed Noor Omar 3<sup>rd</sup> defendant asked the court to adopt his witness statement filed in court on 12/2024 as his evidence in this suit.

He also asked the court to treat the documents in his list of documents dated 12/2/2024 as his exhibits in this matter.

5. In his witness statement DW1 testified that the suit land was allocated to the defendants by the defunct County Council of Isiolo in 1996 and that they have been in occupation since then. He says that the plaintiff started claiming their land in 2019 and that since then the plaintiff has been using the Directorate of Criminal Investigation Officers in Isiolo to harass them. He further says that the purported lease in the possession of the plaintiff is a forged document; that the plaintiff is using to fraudulently claim their land.

He further says that the defendants have constructed dwelling houses on the suit land and that they and their families occupy those houses. He asks the court to find that Boru Culture Group and Boru Self Help Group are the rightful owners of the disputed land.

6. DW2, Mohamed Abdi Kadir, the 6<sup>th</sup> defendant asked the court to adopt his witness statement filed on 12/2/2024 as his evidence in this suit. He also asked the court to treat the documents contained in the defendants' list of documents dated 12/2/2024 as his exhibits in this case.

7. I find that DW2's witness statement more or less reflects the contents of DW1's witness statement. I do not find the necessity to regurgitate that evidence.

8. DW2 told the court that as the evidence of the 7 defendants was similar, they had agreed that his evidence should also be taken as their evidence.

9. The court notes that on 10<sup>th</sup> February, 2024 the defendants had granted DW1 the authority to sign and swear all the necessary documents in the suit on their behalf.

10. The court notes that as testified by DW1 and as shown in the list of documents dated 10<sup>th</sup> February, 2024 the plaintiffs have an allotment letter which was issued by the commissioner of lands on 12<sup>th</sup> May, 1999. Prima facie, this letter of allotment supports the initial occupation of the suit land by the defendants. They have also produced a bundle of receipts showing that they have been paying rent and rates to the County Government of Isiolo and its predecessor, the defunct County Council of Isiolo.

11. The court notes that the defendants' defence does not contain any counter claim. It merely prays for the dismissal of the plaintiff's suit.

12. Without any countervailing evidence by the plaintiff, I find that the defendants have, on a balance of probabilities, proved to the court that this court should dismiss this suit.

13. In the circumstances, this court issues the following orders;

- a. This suit is hereby dismissed.
- b. Costs shall follow the event and are awarded to the defendants.



**DELIVERED IN OPEN COURT AT ISIOLO THIS 6<sup>TH</sup> DAY OF MAY, 2024 IN THE PRESENCE OF:**

Court Assistant: Balozi/Rahma

Abdullahi holding brief for Ondieki for the Defendants.

Caleb Mwiti holding brief for Wanjohi for the Plaintiff.

**HON. P.M NJOROGE**

**JUDGE**

