



**Dellian Langata Limited & another v Rose of Sharon Academy Ltd & 3 others (Environment & Land Case 917 of 2007 & Civil Suit 679 of 2007 (Consolidated)) [2024] KEELC 5322 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5322 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ENVIRONMENT & LAND CASE 917 OF 2007  
& CIVIL SUIT 679 OF 2007 (CONSOLIDATED)**

**AA OMOLLO, J**

**JULY 11, 2024**

**AS CONSOLIDATED ON 24TH JULY 2009 BY ORDER OF HONOURABLE  
LADY JUSTICE SITATI WITH) HIGH COURT OF KENYA AT NAIROBI  
MILIMANI COMMERCIAL COURTS CIVIL SUIT NO. 679 OF 2007**

**IN THE MATTER OF PURCHASE AT PROPERTY  
REGISTERED UNDER THE REGISTRATION OF TITLES ACT**

**BETWEEN**

**DELLIAN LANGATA LIMITED ..... PLAINTIFF**

**AND**

**ROSE OF SHARON ACADEMY LTD ..... 1<sup>ST</sup> DEFENDANT**

**LIMKSOFT TELCOM NETWORK LTD ..... 2<sup>ND</sup> DEFENDANT**

**KIMANI KAIRU & CO. ADVOCATES ..... 3<sup>RD</sup> DEFENDANT**

**AS CONSOLIDATED WITH**

**CIVIL SUIT 679 OF 2007**

**BETWEEN**

**ROSE OF SHARONI ACADEMY LIMITED ..... PLAINTIFF**

**AND**

**DELLIAN LANGATA LIMITED ..... DEFENDANT**



## RULING

1. For determination is the notice of motion application dated 8<sup>th</sup> April, 2024 brought under the provision of the law stated on its face. The Plaintiff/Applicant sought to be granted the following reliefs;
  - i. That the Honourable Court be pleased to hear and determine the instant application in priority to any other issue in substance herein to preserve the judicial process.
  - ii. That the Honourable Justice A. Omollo does recuse herself from hearing this matter and any further proceedings herein.
  - iii. That the matter be placed before the Principal Judge of the Environment and Land Court for re-allocation and/or directions before different judge on the hearing and determination of the matter.
  - iv. That the costs of this application be in the cause.
  
2. The application is premised on grounds;
  - i. The Subject of dispute before this Honourable Court is with reference to the property known as L.R No. 3591/25 (hereinafter “the suit property”).
  - ii. Notably, the suit property is also the same subject of a dispute in the case of ELC Case No. 30 of 2016 formerly HCCC No. 1561 of 1991 as consolidated with HCCC No. 184 of 1991 where the parties are Simon Thuo Muhia and Mary Njoki Muhia vs. Dellian Langata Limited and Agricultural Finance Corporation. The Plaintiff herein is the 1<sup>st</sup> defendant in ELC No. 30 of 2016.
  - iii. On 14<sup>th</sup> December, 2023, Judgment was rendered in ELC Case No. 30 of 2016 (hereinafter “the subsequent suit”) by Honourable Justice A. Omollo where the court substantively the questions with reference to the suit property as raised in the subsequent suit particularly on the transfer instruments.
  - iv. The instant suit raises similar issues with reference to the transfer of the suit property among others and the current issues have featured in the judgment at the court in the subsequent suit.
  - v. The learned judge having had conduct of the subsequent suit, analyzed the evidence before the court, addressed her mind and taken a position on the issues as set out in the judgment, then it is not practically possible for her to hear and determine the instant matter without any inference of the proceedings in the subsequent.
  - vi. Consequently, and noting the overlapping issues, it would only be fair and just that the Honourable Justice A. Omollo presently having conduct of his matter, and who has since rendered judgment in the subsequent suit, recuses herself from hearing this matter and any further proceedings.
  - vii. The Applicant contends that it is at paramount importance that the sanctity of the judicial proceedings is maintain and justice is not only done but seen to be done and the instant matter is determined free of any inference, perception, opinion and decision made in the subsequent suit.



3. The application was opposed by the replying affidavit sworn by Anthony Wahome and dated 18<sup>th</sup> April, 2024. The Respondent deposed inter alia;
  - i. That the Application has been timely filed at the time when the Plaintiff/Applicant is supposed to be proceedings with its case, after having been numerous adjournments for the reasons already stated herein above. In the suit ELC Case No. 30 of 2016, it took about 35 years before it could be resolved. The suit presently before this Honourable Court is about 17 years old from the time it was filed. Thus, it is crystal clear that the Application has been brought in bad faith with the sole reason of delaying the conclusion of the present.
  - ii. That furthermore, I am advised by our advocates on record and which advice I also verily believe to be true and hold it as such, that every case is determined on its own merit based on the facts and the law. And no party can anticipate a determination or a certain outcome and use it as a basis to have a judge recuse herself like in the present Application in the hope that they would get a favourable outcome when the matter is referred to a different judge. That is tantamount to forum shopping and which should not be condoned at all.
4. The Respondents deposed further that no basis has been laid to warrant why this court should not proceed with the present case to its conclusion. They urged that the application be dismissed with costs.
5. The application was argued orally in court and I have considered the submissions for and against the application. The gist of the application is that while determining ELC 30 of 2016, I reached a determination which is automatically adverse to the Applicant hence it will likely not get a fair hearing if I conduct this case to its conclusion. That I have already taken a position in law as regards the effect of lack of Land Control Board consent on a sale agreement.
6. The Respondents argue that the action by the plaintiff amounts to forum shopping. However, they concede that the two parcels of land L.R 3591/25 in this suit and 3591/21 in the former suit originates or trace their roots from the same title.
7. I may not at this preliminary stage assert what findings I will on the issues that will be raised by the Applicant because they have not been raised. However, the principle of equity dictates that justice must not only be done but must be seen to be done. I agree with the Respondent that the Applicant ought to have made a disclosure of the existence of ELC No. 30 of 2016. Unfortunately, the disclosure was not made and we are where we are.
8. I have considered the case of R *Vs Land Registrar Nyandarua, Misc. Appl. No. 9 of 2023* and *Philip K. Tunoi & Another Vs. JSC* (2016) eKLR cited by the Respondents. The latter case, the Court of Appeal stated that in determining the bias, the test to be applied is that of a fair minded and informed observer who will adopt a balanced approach and will neither be complacent nor unduly sensitive or suspicious in determining whether or not there is a possibility of bias.
9. In the instance, the Applicants have a judgment in their hand where I have rendered myself on the matter in dispute. Thus, anyone reading that judgment would ascertain my position in a related matter to the extent of citing the decision. That observation or inference in my view does not bias. *Black's Law dictionary 10<sup>th</sup> Edition* defines actual bias as;
  - “genuine prejudice that a judge/juror, witness or other person has against some person or relevant subject.”
  - “judicial bias – a judge’s bias toward one or more of the parties to a case over which the judge presides.”



10. Although the Applicant does not directly plead bias but it is what application has alluded to. However, the arguments put forth by the Plaintiff/Applicant does not form basis of any bias which would deny them an opportunity to fair hearing. I would have dismissed the application for want of merit but I restrain myself from doing so and instead I recuse myself for personal reasons. The application is granted but not on the grounds of the misconstrued perception of the Plaintiff/Applicant. The costs of this application to the Defendants/Respondent.
11. The file shall be placed before Mbugua J. the Presiding Judge Land Division on 25<sup>th</sup> September for directions and or further orders.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF JULY, 2024**

**A. OMOLLO**

**JUDGE**

