



Kituku & another v Muema & 2 others; Munyao (Suing on Her Own Behalf and as the Personal Representative to the Estate of Peter M. Ndolo – Deceased) & another (Interested Parties) (Environment & Land Case 3 of 2016) [2024] KEELC 5264 (KLR) (10 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5264 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 3 OF 2016**

**A NYUKURI, J
JULY 10, 2024**

BETWEEN

BERNARD KATA KITUKU 1ST PLAINTIFF

BONIFACE MUIA KITUKU 2ND PLAINTIFF

AND

VERONICA NDINDA MUEMA 1ST DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 2ND DEFENDANT

COUNTY LAND REGISTRAR MACHAKOS 3RD DEFENDANT

AND

**CHRISTINA N. MUNYAO (SUING ON HER OWN BEHALF AND AS THE
PERSONAL REPRESENTATIVE TO THE ESTATE OF PETER M. NDOLO –
DECEASED) INTERESTED PARTY**

MAGDALENE MBITHE NDOLO INTERESTED PARTY

RULING

1. Before court is an amended notice of motion dated 12th June 2023 filed by the defendant and interested parties seeking the following orders;
 - a. Judgment on admission be entered in favour of the 1st defendant/applicant as sought in prayer Nos. (b) and (c) of the defence and counter claim dated 15th March 2017 and/or in favour of the interested parties as sought and admitted by the 1st defendant.
 - b. Costs of this application and the main suit be provided for.



2. The application is premised on the supporting affidavit sworn by Alphonse Muema Mbindyo, counsel for the applicant. The applicant's case is that the plaintiffs are joint registered proprietors of land parcel Number Mavoko Town Block 3/31271 (suit property) whereof the 1st plaintiff subdivided the suit property into parcel numbers Mavoko Town Block 3/15731; 15732; 15733; 15734; 15735 and 15736. He stated that the 1st defendant's husband purchased 10 acres from original plot number 315 which is now registered as the suit property from the 1st plaintiff; 3 acres from one Tabitha Kituku and 2 acres from Ndiku Mutua which are now registered and known as parcels 15731 and 15736. Further that from the 10 acres purchased from the 1st plaintiff, the 1st defendant later sold 6 acres to the 1st interested party and 4 acres to the 2nd interested party, who both have since taken possession.
3. He maintained that vide affidavits filed on 28th February 2017 and 15th March 2017 replying to the motion dated 19th January 2016, the 2nd plaintiff admitted the 1st defendant's claim. He also stated that the 2nd plaintiff in his motion of 19th June 2017 supported by affidavit of even date, admits the 1st defendant's claim made in the counter claim. That in the ruling of 23rd November 2017 the court found that the 2nd plaintiff had no objection to the 1st defendant's claim. None of the mentioned documents were attached to the application.
4. The application is unopposed.
5. The court has carefully considered the application and the affidavit in support. The only issue that arise for determination is whether the applicant deserves the orders sought.
6. Order 13 Rule 2 of the Civil Procedure Rules provides for the jurisdiction of this court to enter judgment on admission as follows;

Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just.
7. In the instant suit the 1st defendant has sought for judgment to be entered as per the counter claim on the basis that the 2nd plaintiff admitted the 1st defendant's claim vide three affidavits made on 28th February 2017, 15th March 2017 and 19th June 2017. None of the said affidavits were attached to the instant application and the particulars of the admission have not been mentioned by the applicant. That being the case I find and hold that there is no material placed before court to support the prayers sought in the application herein as to what was supposedly admitted has not been disclosed and the affidavits which are alleged to have contained admissions are not attached to the application.
8. In the premises, I find no merit in the application dated 12th June 2023 and the same is hereby dismissed with no order as to costs.
9. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 10TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI
JUDGE

In the presence of:

Mr. Mbindyo for 1st defendant and interested parties



Ms. Mulwa holding brief for Ms. Nzili for 2nd plaintiff

No appearance for other parties

Court assistant – Josephine

