



Fredswood Traders Company Limited v Kingsway Industrial Park Limited & another; Attorney General & 2 others (Proposed Defendant) (Environment & Land Case E053 of 2024) [2024] KEELC 6518 (KLR) (7 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6518 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E053 OF 2024**

**JA MOGENI, J
OCTOBER 7, 2024**

BETWEEN

FREDSWOOD TRADERS COMPANY LIMITED PLAINTIFF

AND

KINGSWAY INDUSTRIAL PARK LIMITED 1ST DEFENDANT

REAL INDUSTRIAL PARK LIMITED 2ND DEFENDANT

AND

THE HONORABLE ATTORNEY GENERAL PROPOSED DEFENDANT

**THE CABINET SECRETARY, MINISTRY OF LANDS, PUBLIC WORKS,
HOUSING & URBAN DEVELOPMENT PROPOSED DEFENDANT**

THE CHIEF LAND REGISTRAR PROPOSED DEFENDANT

RULING

1. This is an application by way of Notice of Motion, dated 8/04/2024. The applicant is a firm of Advocates, namely B.M. Musyoka & Co. Advocates, which is seeking a determination of the status of representation by counsel in a cause pending in Court. The proceedings at this stage, therefore, are concerned only with the preliminary question of representation, rather than with the main cause.
2. The Firm of M/s. B.M Musyoki Advocates sought affirmation that it is indeed the firm duly instructed to act for and on behalf of the 1st Defendant/Applicant Kingsway Industrial Park Limited which is one and the same company as Real Industrial Park Limited. This firm of Advocates was seeking an affirmation that the firm of M/s. Seko Minayo & Company Advocates is not the firm duly instructed by the 1st Defendant Kingsway Industrial Park Limited to represent it in the substantive suit pending in Court.



3. The Application seeks the following orders”
 - a. Spent
 - b. Spent
 - c. The Honorable Court be pleased to and hereby strike out the firm of Seko Minayo & Company Advocates LLP for appearing for the 1st Defendant/Applicant, and instead to place on record the firm of B.M. Musyoki & Company Advocates as acting for Kingsway Industrial Park Limited, which is one and the same company as Real Industrial Park Limited.
 - d. The Honorable Court be pleased to and hereby join the Honorable Attorney General, the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development and the Chief Lands Registrar as a defendant
 - e. Upon joinder of the Honorable Attorney General, the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development and the Chief Lands Registrar as the 2nd, 3rd and 4th defendants, the Honorable Court be pleased to hereby order the Plaintiff to amend the Plaintiff and to serve the amended plaintiff and summons on all defendants in the matter.
 - f. Upon the grant of prayers (a), (b), (c), (d) and (e) above, the Honorable Court to be pleased to give direction as to the hearing and determination of the Plaintiff’s application dated 13th February, 2024.
 - g. The Honorable Court be pleased to and hereby grant costs of this application to the Defendant.
4. The Application is supported by the grounds on the face of it and the Affidavit of Sanjay R. Shah who states that he is an officer of the 1st Defendant. He states that the 1st Defendant and Real Industrial Park are one and the same company the latter having changed its name to Kingsway Industrial Park Limited of C54643 and its directors were determined by the Court in ELC Civil Suit No. 279 of 2017. In the said suit, the plaintiff’s current advocates who allegedly appeared in the ELC Civil Suit No. 279 of 2017 and purported to represent the 1st defendant in the purchase of the suit property the court found that the said representation and the directors the firm purported to have instructed are illegal. The court stated thus:

“The other entities known as Real Industrial Park Ltd and Kingsway Industrial Park Ltd formed by Jeneby Taita Arap Too and Paul Maiya; Henry Kipkirong Lelei and David Kimunai Milgo; Ken Wycliffe Lugwili; and Henry Okech Opondo; Ernest Kiprotich Kimutei and Charles Mutuku Matolo are illegal entities.”
5. It is the contention Sanjay R. Shah that the board of the 1st defendant has never issued any instructions to the firm of Seko Minayo & Co. Advocates. That the instructions were issued to the firm of B.M Musyoki & Co. Advocates thus the firm of Seko Minayo should be struck off. That the court issued an order prohibiting the Cabinet Secretary Ministry of Lands and Housing and the Chief Land Registrar from dealing with or transacting all the three parcels of Land in ELC Civil Suit No. 279 of 2017 as evidenced through annexure marked as SRS5. Thus it is important that Cabinet Secretary Ministry of Lands and Housing and the Chief Land Registrar are made parties first before the application dated 13th February, 2024 or any other matter is heard.
6. That the court in ELC 279 of 2017 relying on the evidence of the Honorable Attorney General, Cabinet Secretary Ministry of Lands and Housing and the Chief Land Registrar, already declared that



- Kingsway Industrial Park Limited is the owner of the three suit properties, namely LR 209/11287, LR No. 209/11288 and LR No. 209/11289 and thus they should be made parties before this matter and the plaintiff's application is heard to avoid the risk of the court issuing conflicting decisions and bringing the administration of justice into disrepute.
7. Further that since the Cabinet Secretary Ministry of Lands and Housing and the Chief Land Registrar are the custodians of the land records and their joinder is important.
 8. The Application was opposed by the Replying Affidavit of Monica Wanjiru sworn on 16/06/2024 a director of the plaintiff company and filed by Joseph Kiarie & Co. Advocates. Monica Wanjiru states that the plaintiff is the registered proprietor of the suit premises. She depones that whereas the 1st defendant is claiming ownership of the suit premises they have not attached a certificate of ownership nor any search to prove ownership.
 9. Further that the plaintiff has never been a party to any suit relating to the suit property despite being in possession since 2017. That the respondents sued state agencies in HCC No. 279 of 2017 so as to obtain favourable orders by consent. That in any case the parcels being claimed by the 1st defendant do not exist in any records held by the Ministry of Lands.
 10. It is their contention that the plaintiff want to enjoin the same officers they used in HCC No. 279 of 2017 in order to collude with them in the current suit. That the 1st defendant is at liberty to get as much documents as possible and produce in court to prove their ownership since the plaintiff is the one in occupation and the defendants have resorted to harassing the tenants and damaging the suit property and this is what the application dated 13th February 2024 shall show.
 11. The application herein should therefore be dismissed.
 12. The application was canvassed through written submissions
 13. I have considered the application and the responses thereto and from the pleadings this court is called upon to determine the law firm that is properly on record for the 1st defendant Company.
 14. The court in the case of *Uhuru Highway Development Ltd & Others v Central Bank of Kenya Ltd & Others* (2) [2002] 2 EA 654, was of the view that it is not the business of the courts to tell litigants which advocate should or should not act in a particular matter. This is so because each party to a litigation has the right to choose his or her own advocate, unless it is shown to a court of law that the interests of justice would not be served if a particular advocate were allowed to act in the matter.
 15. In the instant case, it is alleged that the Law Firm of Seko Minayo & Co. Advocates had been appointed to act for the 1st defendant. However, Monica Wanjiru for the plaintiff opposed the application. In her response the court noted that she did not address or respond to the interlocutory issues raised in the application about the advocate representing the 1st defendant. She instead focused her response to the issue of ownership of the suit properties which cannot be determined at this stage. She did not bother to clarify the issue of representation This clearly shows that B.M. Musyoki & Co. Advocates are the correct advocates on record for the 1st defendant.
 16. Be the above as it may, the final result of this application is that the properly appointed legal firm is not the firm of Seko Minayo & Co Advocates. In consequence, all acts performed by the firm of Seko Minayo & Company in this case are hereby declared null and void abinitio.
 17. The Orders I will therefore make in respect to the application are the following:



- a. The Honorable Court do hereby strike out the firm of Seko Minayo & Company Advocates LLP for appearing for the 1st Defendant/Applicant, and instead to place on record the firm of B.M. Musyoki & Company Advocates as acting for Kingsway Industrial Park Limited, which is one and the same company as Real Industrial Park Limited.
- b. The Honorable Court do hereby order joinder of the Honorable Attorney General, the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development and the Chief Lands Registrar as a defendant in that order
- c. The Honorable Court do hereby direct that the Plaintiff to amend the Plaintiff and to serve the amended plaintiff and summons and the application dated 13/02/2024 on all defendants in the matter within 14 days from the date of this ruling.
- d. The Honorable Attorney General, the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development and the Chief Lands Registrar are directed to filed their responses within 14 days of being served.
- e. The costs of this application are granted to the 1st Defendant.
- f. Mention shall be on 11/11/2024 for further directions on disposal of the application dated 13/02/2024.

Orders Accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIRIOBI ON THIS 7TH DAY OF OCTOBER 2024.

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MOGENI J

JUDGE

In the virtual presence of:

Mr. Ouma for 1st and 2nd Defendant/Applicant

Mrs Chemutai holding brief for Mr. Kiarie for Plaintiff

Mr. A. Kamau for proposed 3rd, 4th and 5th Defendant

Caroline Sagina - Court Assistant

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MOGENI J

JUDGE

