



Muna & 5 others v Boscardin & 5 others (Environment & Land Case 27 of 2020) [2024] KEELC 6620 (KLR) (9 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6620 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 27 OF 2020**

FO NYAGAKA, J

OCTOBER 9, 2024

BETWEEN

**ANN WAMBUI MUNA 1ST PLAINTIFF
ALLAN MUNGA MUNA 2ND PLAINTIFF
SARAH MWIHAKI MUNA 3RD PLAINTIFF
LUISA NYAKIBISHOI MUNA 4TH PLAINTIFF
REUBEN NG'ANG'A MUNA 5TH PLAINTIFF
KITAMU FARM LIMITED 6TH PLAINTIFF**

AND

**ANNE NJOKI MUNGA BOSCARDIN 1ST DEFENDANT
JANE WANGECI (BEING THE ADMINISTRATOR OF THE ESTATE OF THE LATE ELIZABETH WACHEKE) 2ND DEFENDANT
BERNARD MUIRURI KAMAU (BEING THE ADMINISTRATOR OF THE ESTATE OF THE LATE PRISCILLA WANGECI MUIRURI) 3RD DEFENDANT
MUKAMI GATHU 4TH DEFENDANT
NJERI GATHU 5TH DEFENDANT
NG'ANG'A GATHU 6TH DEFENDANT**

RULING

1. This court was set to deliver a Ruling on the application dated 19/4/2024 on 3/10/2024. Upon preparing the Ruling half-way it came to the attention of the court that on 1/10/2024 the 2nd Defendant, who acts in person, filed a letter dated the same date, in the C.T.S. The letter had content



which made very serious allegations about the status of the property(ies) namely Waitaluk/Kapko Block 11/Gutongorio/71, 58, “B”/70 and 54. Specifically that on 19/09/2024 they (unspecified) were chased away together with a private security firm which had been on the Farm prior to the filing of this case, by people purporting to be persons known as National Youth Service(NYS) Officers who had been sent to the Farm by the OCS Waitaluk Police Station.

2. The letter made other serious allegations that Officers from Kiminini Police Station who had been called by the author of the letter, the 2nd Defendant, refused to act since they were cautioned by the County Criminal Investigation Officer (CCIO) against setting foot on the land.
3. Further that on 23/9/2024 the author and her uncle visited the CCIO, one Mr. Songok. That the NYS Officers denied access to the 2nd Defendant and others who were chased away from the Farm, stating they could not be permitted on the land without the permission of Reuben Muna.
4. Upon reading the letter, this court formed the opinion that before finalizing the Ruling it receives factual information regarding the status quo on the suit land. It summoned the Area Chief of Sirende Location wherein the suit land is situate, and the OCS, Waitaluk Police Station to attend court, and in the presence of all parties and their learned counsel who were online to give the facts about the status on the land.
5. The two officers attended gave a short view about their knowledge of the prevailing events on the subject matter. The Area Chief gave, in summary, the position that his immediate boss, the Deputy Commissioner, one Dolphin Okondo instructed him two weeks ago to keep away from the suit land lest he be in contempt of court. This happened when an issue arose on the Farm, which was alleged to have arisen due to the change of security by one Reuben Muna, the grandson of Clement Muna. He stated that he had since not gone back to the Farm.
6. On his part the OCS, one CIP David Kiprotich stated that the suit land lay within his jurisdiction. He, however, stated that he had earlier on received an order to enforce and he did, and when there was a commotion on the land about 2 weeks ago he went to the Farm and called upon the warring two security teams to work together on the Farm. He, however, stated that he did not know the name of the Security Firm which was employed or instructed by Reuben Muna. This serious lapse by an officer bestowed with the duty to oversee and ensure security immediate in and under his area of jurisdiction is of great concert to this court.
7. For the reasons that the Area Chief Sirende and the OCS Waitaluk have not given a proper, detailed account of the status quo on the suit land, this court directs as follows:-
 1. The Deputy Registrar of this Court shall visit the suit land as soon as possible, specifically on 11/10/2024 at 8.30 am, precisely to ascertain the status quo thereon.

Specifically the Deputy Registrar shall gather information regarding:

 - a. The parties who are resident on the suit land and since when they are resident.
 - b. The party (ies) carrying out farming activities on the land, both cultivation and dairy, and the extend to which they do. The specific crops currently growing on the land and on whose account.
 - c. The Security Firms which are providing security on the suit land, and specifically for how long each of them have been providing the security on the Farm.



- d. Any previous Security Firms that may have provided security on the Farm since January, 2020, and who of the parties has employed or contracted them to be on the land.
 - e. Any other persons or individuals or goons who are or purport to provide security on the land, and on whose account, they are on the land, and since when.
 - f. The properties lost or destroyed on the suit land on the last two years, more so from early this year and as late as the 23/09/2024.
 - g. The houses or structures which are on the suit land, and if possible, the persons who put them up on the land.
 - h. The in-charge or managers and contracts of the managers and office contacts, and C.E.O's contracts of the Security Farm currently providing security on the Farm.
2. The Deputy Registrar shall be accompanied by the Area Chief, Sirende Location and his Assistant Chief(s) during the site visit to the land.
 3. The Deputy Registrar (Officer) shall too be accompanied by the OCS Waitaluk Police Station to the site.
 4. The Deputy Registrar shall be accompanied by the Officer of the Court, including one authorized to take photographs as will be directed by the Deputy Registrar.
 5. The OCS Waitaluk Police Station is directed to ensure and provide enough security during the site visit.
 6. Each of the parties is and shall be at liberty to appoint only one person or only one of each of the parties shall be present and accompany and guide the Deputy Registrar and Officers of the Court onto the specific areas of concern during the visit.
 7. The Deputy Registrar is and shall be at liberty to ask any questions any person, including any other one there, the persons appointed by the parties, for clarification on any issue.
 8. The Deputy Registrar is at liberty to gather any other information relevant to the status quo on the Farm, besides that referred to herein-above.
 9. The Deputy Registrar shall fill the Report about his visit as soon as possible, upon which the same shall be disseminated to the parties and the same be considered by the court upon confirmation of receipt by the set of three parties herein.
 10. For clarity purposes the set of parties herein above referred to are:
 - (a) The Plaintiff.
 - (b) The 1, 3, 4, 5 and 6 Defendants.
 - (c) The 2nd Defendant.Those are the sets of partiers who shall either accompany the Deputy Registrar and Officers as they go round the Farm during the visit or appoint a representative to do so.
 11. The parties' learned counsel may be present during the visit if they so desire.



12. This matter shall be mentioned on October 28, 2024 to confirm whether the Report by the Deputy Registrar shall have been ready and disseminated to the Plaintiff, the 1, 3-6 Defendants and the 2nd defendant.
13. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THE 9TH DAY OF OCTOBER, 2024.

**HON. DR. IUR FRED NYAGAKA
JUDGE, ELC KITALE**

