



**Maalim v Musa (Suing as the Administrator Ad Litem of the Estate of Fatuma Ahmed) & 2 others  
(Environment & Land Case E001 of 2022) [2024] KEELC 6551 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6551 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E001 OF 2022  
LN MBUGUA, J  
OCTOBER 3, 2024**

**BETWEEN**

**MOHAMED DAHIR MAALIM ..... PLAINTIFF**

**AND**

**AMINA MUSA (SUING AS THE ADMINISTRATOR AD LITEM OF THE  
ESTATE OF FATUMA AHMED) ..... 1<sup>ST</sup> DEFENDANT**

**COLONEL FARAH ..... 2<sup>ND</sup> DEFENDANT**

**GULED ALIAS PS ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before me is the Plaintiff's Notice of Motion dated 1.2.2024 seeking injunctive orders against the defendants in relation to the suit property LR No.36/1/50. The application is premised on the grounds on its face and on the supporting affidavit of the applicant. The plaintiff claims to be the registered owner of the suit property, hence he is entitled to possession thereof.
2. Anna Musa has filed a replying affidavit dated 24.7.2024 claiming that she co owns the suit property with one Fatuma Ahmed who is deceased. The respondents also oppose the application vide grounds of opposition dated 7.2.2024 where it is contended that similar orders had been sought in the application of 7.12.2023.
3. Indeed as pointed out by the respondents, the plaintiff has previously filed similar applications in addition to other numerous applications. In total, the following applications have been filed;
  - 1) Application dated 3.7.2022
  - 2) Application dated 17.6.2022
  - 3) Application dated 11.4.2023



- 4) Certificate dated 7.6.2023
  - 5) Application dated 1.6.2023
  - 6) Application dated 11.7.2023
  - 7) Application dated 13.7.2023
  - 8) Application dated 19.7.2023
  - 9) Application dated 4.8.2023
  - 10) Application dated 7.12.2023
  - 11) Application dated 1.2.2024.
4. Out of the above mentioned applications, only two were brought forth by the respondents. The rest have been filed by the plaintiff. Even though the court had allowed the plaintiff's claim in the judgment of 8.12.2022, and even found defendants to be in contempt of court orders vide the ruling dated 12.7.2023, it is noted that the said judgment was set aside vide the courts ruling of 21.11.2023 in which the respondent's application to set aside the judgment was allowed. In the same ruling, the plaintiff's application for injunction dated 4.8.2023 was dismissed, and directed the plaintiff to serve one Amina Musa with summons to enter appearance. Instead of focusing on the substantive issues geared towards resolution of the dispute, the plaintiff embarked on filing a plethora of applications including the one of 7.12.2023 still seeking injunctive orders.
5. In the case of *Lawrence Kinyua Mwai v Nyariginu Farmers Co Ltd & another* [2019] eKLR, the court (Judge Mbugua) while flagging out a record 18 applications invoked the principles of Active Case Management and stated as follows;
- “In exercising its judicial authority this court has a duty to facilitate just and expeditious determination of proceedings. One of the cardinal principles in our constitution is “the expeditious delivery of justice” – see Article 159 (2) (b) of the *Constitution* of Kenya, which in effect codifies the 17<sup>th</sup> century maxim “Justice delayed is justice denied”. This means that if justice is not provided in a timely manner to the parties, it loses its importance and it violates the human rights of the litigants and their families. That is precisely why rights to speedy trials are incorporated in law worldwide.....”
6. The court went on to state that;
- “Active Case management is also the effort by courts to handle cases in such a manner that they are resolved fairly and as promptly and economically as is reasonable in the circumstances of the case. The fairness part can be found within the notion of procedural justice while the promptness and economics part of the case management can be found within the notion of the efficiency of justice. Efficiency of justice implies that justice is done at reasonable costs to the parties and the court and within a reasonable time, that is without an abnormal delay. Procedural justice concerns the fairness, consistency and the transparency of the processes by which progress in a case is made”.



7. Similarly, this is a case whereby the court must strive to shepherd the trial to full hearing. For this to happen, the parties and their advocates must embrace the overriding objective set out under Section 1A (3) of the Civil Procedure Act where it is stated that;

“A party to civil proceedings or an advocate for such a party is under a duty to assist the court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.”

8. This far, I consider the application dated 1.2.2024 to be subjudice to similar applications filed herein, and that the same amounts to an abuse of the court process. I therefore find it expedient to give the following orders;

1. The application dated 1. 2. 2024 is hereby dismissed with costs to one Amina Musa.
2. Any other pending application is hereby dismissed.
3. The parties are directed to take both a pre-trial date and a hearing date.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024  
THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

M/s Ndiege for Plaintiff

Hosea for the 1<sup>st</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants

Court assistant: Joan

