



**Sankale v Registrar of Lands Ngong & another; Mwaniki & another
(Administrator) (Estate of Jona Keiru Mwaniki) (Environment & Land Case
E085 of 2022) [2024] KEELC 7206 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7206 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E085 OF 2022
MN GICHERU, J
NOVEMBER 4, 2024**

BETWEEN

JULIUS KOMOI SANKALE APPELLANT

AND

REGISTRAR OF LANDS NGONG 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

JOSHUA GICHUKI MWANIKI ADMINISTRATOR

WANGUI WANYIKA ADMINISTRATOR

ESTATE OF JONA KEIRU MWANIKI

RULING

1. This ruling is on the notice of motion dated 21/11/2022. The motion which is by the interested parties seeks the following residual prayers.
 1. Stay of proceedings herein pending the conclusion of criminal proceedings against the plaintiff in the CID Office Ngong.
 2. An order of temporary injunction against the plaintiff or anybody claiming through him to restrain him from entering, trespassing, encroaching, or interfering with the interested parties' quiet possession of the suit property namely Kajiado/Loodariak/867 pending the hearing and determination of this suit.
 3. That the costs of this application be provided for.



2. The motion which is brought under Article 45 of the Constitution, Sections 1A, 3A, 6 and 7 of the Civil Procedure Act, Order 1, rules 5, 6, and 14 of the Civil Procedure Rules, Sections 7 and 8 of the Limitation of Actions Act, Sections 24 – 26 of the Land Registration Act and all enabling provisions of the law is based on six (6) grounds, a supporting affidavit dated 21/11/2022 and six (6) annexures.
3. In summary, the above material is as follows. Firstly, the interested parties are children of the registered owner of the suit land. Secondly, they have been appointed as administrators of the estate of their deceased father. Thirdly, the deceased owner of the suit land became registered as such on 11/6/1990 whereupon he occupied the land. He passed on on 29/11/2006 and in his lifetime, he did not transfer the suit land to any person. Fourthly, there are ongoing criminal investigations against the plaintiff where he is suspected to be in possession of a forged title deed to the suit land. Fifthly, the Land Registrar has confirmed that the title deed held by the interested parties is authentic while the one held by the plaintiff is a forgery.

For the above and other reasons, the interested parties pray that their motion be allowed.

4. The motion seems to be unopposed because I have not seen any replying affidavit on record or any grounds of opposition.
5. I have carefully considered the motion in its entirety and even though it is unopposed, I find that it has no merit for the following reasons.
6. Firstly, under Section 193A of the Criminal Procedure Code, Criminal and Civil Proceedings can run concurrently. The Section reads as follows.

“Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly and substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings”.

This provision recognizes that we can have both criminal and civil proceedings in respect of a matter in issue in both the criminal and civil cases.

7. Secondly, both the Constitution at Article 159 2 (b) and the Civil Procedure Act at Sections 1A and 1B as well as the Environment and Land Court Act at Section 3 require that justice shall not be delayed and that land cases be heard and determined expeditiously. To have this case pending while awaiting criminal proceedings which may last long defeats the above provisions of the Constitution and the law.
8. For the above stated reasons, I find no merit in the motion dated 21/11/22 which I dismiss. Costs in the cause.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY 4TH DAY OF NOVEMBER 2024.

M.N. GICHERU

JUDGE

