



REPUBLIC OF KENYA



**Zinger Enterprises Limited v Ngari & 2 others (Environment & Land  
Case 80 of 2017) [2023] KEELC 564 (KLR) (8 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 564 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 80 OF 2017**

**MN GICHERU, J  
FEBRUARY 8, 2023**

**BETWEEN**

**ZINGER ENTERPRISES LIMITED ..... PLAINTIFF**

**AND**

**ESTHER WANGARI NGARI ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, KAJIADO ..... 2<sup>ND</sup> DEFENDANT**

**HON ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated July 21, 2022. The motion which is brought under order 12, rule 7, *Civil Procedure Rules* and sections 1, 1A, 3A and 7 of the *Civil Procedure Act*, order 51, rule 1 of the *Civil Procedure Rules* and article 159 (d) of the *Constitution* of Kenya seeks three prayers. They are as follows.
  - (a) The order dated June 23, 2022 dismissing the suit be set aside together with all consequential orders.
  - (b) The plaintiff's suit be reinstated for hearing on merit.
  - (c) That costs be in the cause.
2. The motion is supported by an affidavit dated July 27, 2022 sworn by the plaintiff which has two annexures. In addition to the affidavit there are twenty nine (29) grounds annexed to the notice of motion.

In a nutshell, the plaintiff is saying that he has been told by his advocate on record that the advocate was not served with the notice to show cause dated April 12, 2022 on April 14, 2022 as the notice of motion purports.



3. The notice of motion is opposed by the first defendant who has sworn a replying affidavit dated December 1, 2022. In the affidavit the first defendant insists that the plaintiff's counsel was served just like all the other counsel on record. The other counsel attended court on June 23, 2022 and only the plaintiff's counsel failed to attend.

In addition to the above, the first defendant deposes that the suit is based on falsehood because her husband, the registered owner of the suit land Mr Evanson Ngari P Kamau, died on April 19, 2006 and the purported sale of land between the plaintiff and the deceased took place on June 15, 2010 more than four years after the death of the seller, the late Evanson Ngari P Kamau.

Further the first defendant adds that the reason why the plaintiff does not want the suit concluded is that he is enjoying the status quo which is that he is in illegal occupation of the suit land where he grazes his livestock.

The only reason why the plaintiff filed this application is to avoid paying the costs because he filed it immediately after he was served with the bill of costs.

4. Counsel for the parties filed written submissions dated October 24, 2022 and December 12, 2022.
5. I have carefully considered the notice of motion dated July 21, 2022 in its entirety including the affidavits, grounds, annexures, submissions and the law cited therein.

I find that the entire application has no merit at all for the following reasons.

6. Firstly, the affidavit by the plaintiff is not on what is within his own knowledge but what is within the knowledge of his counsel. In paragraphs 5, 6, 7, 8, 9, 11, 12, 13, 14 and 15, he deposes what he has been told by his counsel. Paragraph 14 is especially critical because it concerns the service of April 14, 2022. The plaintiff chose to rely on hearsay in his application instead of relying on the best evidence. The application is based on very weak evidence.
7. Secondly, even after the plaintiff was served with the strong and highly credible affidavit by the first defendant which raises serious questions as to the authenticity of the agreement which forms the core of his suit, he did not file supplementary evidence to controvert this strong and credible evidence.
8. Thirdly, the credible deposition by the first defendant that the plaintiff is not bothered about prosecuting the case because he has no valid claim against her anyway and he is enjoying the status quo has also not been challenged by the plaintiff in any form.
9. Finally, under article 159 of the Constitution of Kenya, sections 1A and 1B of the Civil Procedure Act and section 3 of the Environment and Land Court Act, justice shall not be delayed and all cases and especially land cases should be heard and determined expeditiously.

Since the plaintiff filed this suit on November 1, 2011, more than eleven years ago, he has never shown any initiative to have it heard. It is the court and the first defendant who have been pushing him to prosecute it and the record will show his obvious reluctance in doing so.

10. For the above stated reasons, I dismiss the notice of motion dated July 21, 2022 with costs to the respondents.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**M.N. GICHERU**



**JUDGE**

