



**Gichuiya v Wainaina (Environment & Land Case 410 of 2017)
[2023] KEELC 16008 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16008 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 410 OF 2017
LN GACHERU, J
MARCH 9, 2023**

BETWEEN

PATRICK MWAURA GICHUIYA PLAINTIFF

AND

MARY MUIRIGO WAINAINA DEFENDANT

RULING

1. The Notice of Motion Application for determination is the one dated February 10, 2022, and filed on March 14, 2022, seeking the following orders:
 - a. That the Deputy Registrar of this Court be authorized to sign all the necessary documents to effect the excision and transfer of 2.5 acres to the Plaintiff/Applicant from land parcel no Loc 16/Mwagu/677, in place of the Defendant/Respondent herein pursuant to the decree of this Court issued on September 18, 2018;
 - b. That the Land Registrar Murang'a do dispense with the production of the original title document in respect of land parcel No Loc 16/Mwagu/677, during the process of mutation and transfer of 2.5 acres out of the said parcel of land to the Plaintiff/Applicant; and
 - c. The costs of this application be borne by the Defendant/Respondent.
2. The application is premised on the grounds stated thereon and Supporting Affidavit of Patrick Mwaura Gichuiya sworn on February 10, 2022, in which he averred that the despite several demands by the Plaintiff/Applicant, the Defendant/Respondent has failed, refused and/or neglected to execute the necessary documents to facilitate the excision and transfer of 2.5 acres out of land parcel no Loc.16/Mwagu/677 (the suit property) pursuant to the Decree of this Court given on September 18, 2018. Furthermore, that the Defendant/Respondent has also failed to avail the original title deeds in order to effect the orders of the Court.



3. The Applicant averred that a consent was recorded before Court on September 18, 2018, ordering the suit property to be transferred to him, together with vacant possession. The Applicant further averred that the Respondent has given him possession of the suit property. Lastly, that the Respondent discharged the property from the bank, but subsequently failed to transfer the suit property to the Applicant.
4. The Respondent opposed the application through her Replying Affidavit dated April 19, 2022, and filed on April 21, 2022. She averred that the parties had indeed entered into a consent in this matter on September 20, 2018, which was adopted as an order of the Court. That contrary to the Applicant's averments, she has endeavoured to comply with the consent order. She further averred that she gave the Applicant vacant possession of the suit property, completed the payment of an outstanding loan facility attached to the suit property and obtained the discharge, made an application for the Land Control Board consent to sub-divide the suit property, and submitted the same. She further averred that she was denied consent required to sub-divide the suit property by the Land Control Board, owing to the fact that status quo orders were still registered against the suit property by the Applicant. The Respondent averred that he informed the Applicant of the hindrance. However, the Applicant refused to remove the *status quo* order to protect the suit property from sale to a third party.
5. Lastly, the Respondent averred that the original title to the suit property is in possession of Samuel Wainaina, and thus he was unable to produce it. The Respondent prayed that this Court dismiss the application together with the status quo orders registered on the suit property so that the Respondent may sub-divide the suit property.
6. The matter was canvassed by way of written submissions. The Applicant through the Law Firm of Jesse Kariuki & Co. Advocates filed their written submissions in support of the application on June 24, 2022. On the issue as to whether the Court orders have been followed, the Applicant submits that the Respondent has failed to co-operate by providing the original title deed, Land Control Board consent, sub-division and execution of the Mutation and Transfer forms.
7. The Respondent through Mwangangi J & Co. Advocates, filed their written submissions opposing the application on October 27, 2022. The Respondent main issue for determination was whether to grant the orders prayed in the application dated February 10, 2022. The Respondent submitted that the Applicant has not adduced any evidence to prove her refusal to execute the documents to effect the transfer. She relied on Section 107 of the [Evidence Act](#) which provides that he who alleges a fact must prove it. The Respondent further submitted that she made all efforts to obey the consent order, but was hampered by the Applicant conduct of registering a status quo order, against the suit property which prevented the Land Control Board from sub-dividing the suit property.
9. The Respondent further submitted that the application is an abuse of the Court process as set out in the case of [Kenya Planters Co-operative Union Ltd v. Kenya Co-operative Coffee Millers Ltd & Another](#) (2016) eKLR, which the Court held as follows:

“As to what constitutes an abuse of Court process is a matter to be determined by the circumstances of each case as there is no all-composing definition of the concept “abuse of process” – Benosi v. Wyley 1973 C.A. For instance, filing a fresh Notice of Motion where there is in Court another pending in Court another un-determined Notice of Motion has been held to be an abuse of the Court process.

As already indicated above, this Petition has been filed while there is pending at this same Court an appeal arising from the ruling of the Business Premises Tribunal challenging the Tribunal jurisdiction in dismissing the Preliminary Objection and that the tribunal violated



its right to a fair hearing. Those are substantially the same issues raised herein and amount to an abuse of the Court process.”

10. This Court has reviewed the application and the annexures thereto and concludes that there are two main issues for determination. The first is whether to direct the Deputy Registrar of this Court to sign the requisite documents to complete the transfer of 2.5 acres from the suit property? The second issue for determination is whether to remove the status quo orders on the suit property?
11. The Applicant has filed the present application for orders to direct the Deputy Registrar of the High Court to sign all necessary documents to effect the transfer of the suit property, and dispense with the production of the original title to the suit property during the mutation and transfer to 2.5 acres out of the suit property.
12. The Respondent opposed the application on the grounds that following the recording of the consent, she has adhered to all the requirements to complete the transfer of 2.5 acres from the suit property save for acquiring consent from the Land Control Board, to sub-divide the suit property and complete the process. The Respondent alleges that a status quo order, registered by the Applicant, is on the suit property and that the Applicant has refused to remove it hindering the sub-division.
13. From the issue framed for determination, this Court is called upon to determine whether to direct the Deputy Registrar to sign the necessary documents to complete the transfer and dispense with the requirement for the original title documents.
14. The purpose of an order of status quo has been reiterated in a number of decisions. In *Republic Vs National Environment Tribunal, Ex-parte Palm Homes Limited & Another* [2013] eKLR, Odunga J. stated,

“When a Court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”
15. In the present case the status quo orders were put in place by the Applicant which are currently preventing the sub-division and transfer of 2.5 acres from the suit property from the Respondent to himself. The Respondent averred that the Applicant refused to remove the status quo orders which he himself registered.
16. The nature of status quo orders were discussed in the case of *Murithi Jin Boabab Beach Resort* as quoted by F. Tuiyot Saifudeen Abdullahi & 4 Others in Mombasa High Court Misc. Civil Cause No. 11 of 2012 as follows:

“In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the



eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”

17. In the case of *Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others* [2015] eKLR, Onguto J. stated that an order of status quo can be given by the Court exercising its general jurisdiction and that the order need not necessarily be prayed by the parties and in fact, can be originated by the Court.

“Firstly, an order of status quo will issue through a judicial process. Where the Court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the Court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the Court or by the consent of the parties. Often the Court would not have been moved by either party. The Court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the Courts’ further orders. It is intended to also freeze the state of affairs. State of affairs however do not always remain static, so it is always crucial for the Court to be very specific and neat in its description of what state of affairs is to be preserved.”

18. Considering the above on the issue of status quo orders, this Court notes that the status quo orders were intended to preserve the suit property during the hearing and determination of the suit, particularly, ELC at Nyeri Case no 206 of 2016. The suit is now determined through the recording and adoption of the consent recorded by the parties. The status quo orders are not meant to last indefinitely but is meant to preserve the existing state of affairs during the pendency of the suit meaning that they extinguished following the recording of the consent.
19. The final issue to address relates to the custody of the title documents of the suit property which the Respondent alleges is with their brother Samuel Wainaina and is therefore unable to produce it. This Court notes that this is a delay by the Respondent to complete with the sub-division of the suit property as ordered by the Court.
20. Having found that the Defendant/Respondent is relying on status quo orders to delay the sub-division of the suit property, this Court orders the following:
1. That the status quo orders dated October 18, 2016, be and are hereby discharged;
 2. That the Deputy Registrar of this Court be authorized to sign all the necessary documents to effect the excision and transfer of 2.5 acres to the Plaintiff/Applicant from land parcel no. Loc 16/Mwagu/677, in place of the Defendant/Respondent herein pursuant to the decree of this Court issued on 18th September 2018;
 3. That the Land Registrar Murang’a to hereby dispense with the production of the original title document in respect of land parcel No. Loc 16/Mwagu/677 during the process of mutation and transfer of 2.5 acres out of the said parcel of land to the Plaintiff/Applicant; and
 4. The costs of this application be borne by the Defendant/Respondent.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MURANG’A THIS 9TH DAY OF MARCH, 2023.

L.GACHERU



JUDGE

Delivered virtually in the presence of:

M/s Macharia H/B Kariuki for the Plaintiff/Applicant

M/s Waititu for the Defendant/Respondent

