Abdalla v Abdallah & 3 others (Environment & Land Case E25 of 2021) [2023] KEELC 18573 (KLR) (5 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18573 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ENVIRONMENT & LAND CASE E25 OF 2021

MAO ODENY, J

JULY 5, 2023

BETWEEN

BASHIR ALI ABDALLA ..... PLAINTIFF

AND

SAID MOHAMMED ABDALLAH ..... 1ST DEFENDANT

HABIB SAID ..... 2ND DEFENDANT

ISLAM AHMED ..... 3RD DEFENDANT

AHMED MOHAMMED HAMI ..... 4TH DEFENDANT

RULING

1. This ruling is in respect of Interpleader proceedings dated August 18, 2022 seeking the following orders;

    a. Spent

    b. That the honourable court do hereby issue orders directing the plaintiff/ applicant to proceed and remit the balance of Kshs. 1,200,000/- over to the 1st defendant/ respondent herein and/or otherwise as the honourable court shall deem fit to grant; in regard to the premise Wakf Land Plot No. 682/2 situate next to Sheikh Nassor Mosque Malindi within Kilifi County and that the matter be marked as settled and file closed.

    c. That and/or in the alternative, the honourable court do hereby direct that the plaintiff/ applicant do deposit the decretal sum of Kshs. 1,200,000/- in court during the pendency of the subsisting claim.

d. That a declaration do hereby issue that the plaintiff/ applicant is the bona fide owner of the aforesaid premise namely Wakf Land Plot No. 682/ 2 situate next to Sheikh Nassor Mosque Malindi and is thereby entitled to a quiet and peaceful possession of the said premises; with no interruptions and/or intrusions on the part of the respondents.

e. That any further directions that this honourable court shall deem fit to grant.

f. That the costs of this Application be borne by the respondents.

2. The applicant Bashir Ali Abdalla relied on his supporting affidavit where he deponed that he entered into a sale agreement with the 1st defendant and before remittance of the balance of Ksh 1milliom the 2nd 3rd and 4th defendants contested the ownership of the suit property.

3. The applicant states that he has no claims or interest over the remittance of the balance save to charges and costs and that he has not colluded with the Respondent apart from the ascertainment of the court to enable him remit the balance of Kshs. 1,200,000/-.

4. That he is ready and willing to pay or transfer the subject matter into court or dispose of it as the court may direct.

5. In response to the application, the 1st defendant filed a replying affidavit sworn on September 2, 2022 where he deponed that the plaintiff is in breach of the agreement between the parties and his claim is for ownership of his property that the plaintiff has refused to clear the balance. According to him, the prayer for depositing the money in court is not necessary and he contended that if the plaintiff is ready to deposit the money, then it should be directly to him together with interest at court rates plus costs.

6. The 2nd, 3rd and 4th defendants in response filed grounds of opposition stating that the summons offend the provisions of section 58 of the *Civil Procedure Act* and Order 34 of the *Civil Procedure Rules* as the applicant is not an interpleader in the strict sense of the law, that the Plaintiff cannot be an interpleader as he has an interest in the suit property that he purports to have purchased.

7. The defendants stated that the summons seek an order to effectively dispose of the matter as per the court's ruling of May 11, 2022. They also stated that from the summons there is collusion between the plaintiff/ applicant and the 1st defendant in ensuring that the 4th defendant/ Respondent's claim over the subject property goes unheard hence denying him the right to a fair trial. They further contented that this matter ought to proceed for hearing as directed by the court in its ruling of May 11, 2022.

Plaintiff's Submissions.

8. Counsel submitted that Order 34 Rule 1 & 2 of the *Civil Procedure Rules* provides that an interpleader must satisfy the court that he claims no interest in the subject matter in dispute other than for charges or costs, that there is no collision between the applicant and any of the claimant and that he is willing to pay or transfer the subject matter into court or as the court might direct.

9. He also submitted that the plaintiff/ applicant has no interest in remitting the decretal sum of Kshs. 1.2 million save for the costs of the substantive application and that the only deterrence was that the 2nd, 3rd and 4th respondents' laid claim over the subject parcel of land.

1st Respondent's Submissions.

10. Counsel confirmed that indeed there was an agreement for sale and that the plaintiff paid part of the consideration and that the balance has never been paid. According to counsel, the reasons advanced

by the plaintiff for seeking to deposit the money in court has not been justified and that there is no judgment that has been entered to that effect. It was counsel's submission that there was no need of depositing the money in court as the same can be paid directly to the 1st defendant with interest and costs.

2nd, 3rd & 4th Respondents' Submissions.

11. In determining whether the Interpleader proceedings should be allowed, counsel submitted that the substance of the suit is to determine who is the rightful owner of the suit property, that the matter is yet to be determined and as such, an application seeking orders to direct payment to a particular party in the suit is misdirected.

12. Counsel relied on section 58 of the *Civil Procedure Act* and the provisions of Order 34 Rule 2 of the *Civil Procedure Rules* as was held in the case of *Safina Properties Limited & another v Barclays Bank of Kenya Limited & another* (2015) eKLR. It was counsel's submission that the applicant cannot be termed as an interpleader as he clearly claims to have ownership interest in the subject property which he alleges to have purchased. That the 4th defendant has raised issues as to the ownership of the subject property and he has not at any given time indicated that he wishes to sell his property to the applicant.

Analysis And Determination

13. The issue for determination is as to whether the applicant has met the threshold for interpleader proceedings.

14. Section 58 of the *Civil Procedure Act*, cap 21 provides: -

> " 58. Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants, or where a suit dealing with the same subject-matter is pending may intervene by motion on notice in such suit, for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made, and of obtaining indemnity for himself:..."

15. Order 34 Rule 2 of *Civil Procedure Rules* 2010, which is founded on the above section, lays out the characteristics of an interpleader as follows: -

> " In every suit of or application by way of interpleader the applicant shall satisfy the court by way of affidavit or otherwise—(a)that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;(b) that there is no collusion between the applicant and any of the claimants;(c) that the applicant is willing to pay or transfer the subject-matter into court or to dispose of it as the court may direct."

16. In this case, the plaintiff cannot be an interpleader as he has an interest in the suit property that he purports to have purchased. The application by the plaintiff seeks an order to effectively dispose of the matter without hearing the 2nd 3rd and 4th respondents. I had stated in my ruling dated May 11, 2022 that the status quo be maintained and the parties fasttrack the hearing of the case.

17. Looking at the 1st defendant's submission it seems that he is not clear on what he wants as in one breath he says that there is no justification why the money should be deposited in court, and on the other

that the money should be deposited directly to his account. Does it mean that there is a justification of payment into his account?

18. The order the plaintiff is seeking for cannot be granted while ownership issue has not been determined. It is evident that there must be collusion between the plaintiff/ applicant and the 1st defendant noting that the 4th defendant/ respondent has also laid claim over the subject property.

19. The upshot is that the plaintiff's application is dismissed with costs to the 2nd 3rd and 4th defendants.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 5TH DAY OF JULY 2023.

M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.