



City Council of Nairobi v Sikamoi & 2 others (Environment & Land Case 392 of 2008) [2023] KEELC 20521 (KLR) (5 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20521 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 392 OF 2008
LN MBUGUA, J
OCTOBER 5, 2023**

BETWEEN

CITY COUNCIL OF NAIROBI PLAINTIFF

AND

JOEL KANI OLE SIKAMOI 1ST DEFENDANT

**BOARD OF MANAGEMENT OF GARDEN ESTATE SECONDARY
SCHOOL 2ND DEFENDANT**

**BOARD OF MANAGEMENT OF GARDEN ESTATE PRIMARY
SCHOOL 3RD DEFENDANT**

RULING

1. This matter is partly heard and was scheduled for hearing on October 2, 2023 when evidence in the case of the 2nd plaintiff in the file 1057/2016 was taken. Counsel Mengitch then sought for an adjournment in order to have summons issued to National Land Commission to verify the issues of Review and a site visit.
2. The application was supported by counsel Nyang' for the 1st defendant in case No 392/2008.
3. M/s Kerubo for the 2nd & 3rd defendants in case No 1057/2016 opposed the suit averring that the complaint was lodged at National Land Commission when the matter was already in court. Counsel Nyareso for the plaintiff in case No 392/2008 associated herself with the sentiments of M/s Kerubo.
4. In rejoinder, Counsel Mengitch averred that they desire to call the aforementioned personnel out of abundance of caution in order to unravel the dispute at hand.
5. Counsel Kemunto also made an oral application seeking summons to the Director of Land administration Ministry of Lands to testify on the nature of allocation of the suit property.



6. I find that this case is partly heard. On February 25, 2022 a witness (PW1) was stood down primarily because the parties/advocates had not put their houses in order in terms of indicating the nature of evidence to be availed and how this was to be done. The court gave directions that documents which shall not be captured in the respective Trial Bundles shall stand as expunged.
7. More than a year down the line, some parties/advocates (read Mr Mengitch and M/s Kerubo) are now making applications to avail particular witnesses. This is court abhors any practice that boarders on trial by ambush.
8. Nevertheless, the court will allow the applications on the following strict terms;
 - i. That the officers to be summoned at National Land Commission and the Ministry of Lands must have their statements recorded, filed and served within 30 days from today otherwise the applications to summon the said witnesses shall stand as dismissed.
 - ii. That summons are to issue to the officer(s) from the National Land Commission and Ministry of Lands as prayed by Mr. Mengitch and M/s Kerubo but the said counsels shall avail the actual particulars of the aforementioned officers.
 - iii. That Mr. Mengitch and M/s Kerubo shall undertake the responsibility of effecting service of the said summons.
 - iv. That the case shall not be adjourned at the instance of Mr Mengitch or M/s Kerubo or due to unavailability of the aforementioned witnesses from the National Land Commission and or the Ministry of Lands.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF OCTOBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Nyareso for the plaintiff in 392 of 2008

Kerubo for 2nd and 3rd Defendant in 392 of 2008 and for 2nd Defendant in 1057 of 2016

Mengitch for 2nd Plaintiff in 1057 of 2016 and holding brief for M/s Nyang in 1057 of 2016 and for 1st Defendant in 392 of 2008

Court Assistant: Eddel

