



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**HCCC NO. 202 OF 2008**

SWANI COFFEE ESTATES LIMITED.....PLAINTIFF

VERSUS

TERRA FLEUR LIMITED.....1<sup>ST</sup> DEFENDANT

BANK OF INDIA LIMITED.....2<sup>ND</sup> DEFENDANT

**RULING**

**Background**

1. The plaintiff herein sued the defendants through the plaint dated 16<sup>th</sup> April 2008 and amended on 7<sup>th</sup> February 2011 seeking the following orders: -

*A. An injunction restraining the 1<sup>st</sup> defendant herein by itself, servants, agents or otherwise howsoever from entering into, tilling, farming, accessing or in any manner whatsoever interfering with the plaintiff property, to wit L.R. No. 304/9.*

*B. A mandatory injunction compelling the 1<sup>st</sup> defendant herein by itself, servants, agents, or otherwise however to give vacant possession of the property herein to wit L.R. No. 304/5 to the plaintiff.*

*C. An order that the 1<sup>st</sup> defendant herein do re-convey the suit property herein to with L.R. No. 304/5 to the plaintiff.*

*D. An order that the 1<sup>st</sup> defendant herein do deliver vacant possession of the suit property herein to wit L.R. No. 304/5 to the plaintiff.*

*E. An order of mesne profits.*

2. The matter proceeded before different judges of this division and the Court of Appeal on several interlocutory applications and appeal.

3. The main suit was however eventually heard by Farah Amin J. on 15<sup>th</sup> and 16<sup>th</sup> May 2017 after which she fixed the matter for judgment on 17<sup>th</sup> January 2018 and directed parties to file and exchange written submissions.

4. The case was subsequently mentioned before Farah Amin J. on numerous occasions but suffice as to say that no judgment was delivered by the said judge who vide a letter dated 14<sup>th</sup> September 2020 returned the file to the then Presiding Judge of this Division, Justice Mary Kasango on the basis that she (Amin J.) had been transferred to Mombasa.

5. On 28<sup>th</sup> January 2021 Mabeya J. the Presiding Judge of this Division allocated the file to this court for my directions. When the matter came up for mention, for the first time before me, on 4<sup>th</sup> March 2021 counsel for the parties informed the court that there were two pending applications for hearing, namely: -

a) The 1<sup>st</sup> defendant's application dated 4<sup>th</sup> December 2019 seeking the transfer of the case to Environment and Land Court at Thika.

b) The plaintiff's application dated 7<sup>th</sup> October 2019 seeking the amendment of the plaint.

6. As I have already stated in this ruling, the main suit has already been heard fully and has been pending judgment before Amin J. It is not clear to this court why the said Amin J. did not deliver the said judgment despite the fact that it has been pending since May 2017.

7. Be that as it may, I am of the view that the mere fact that the judgment has not been delivered is not a *carte blanche* for parties to re-open the case through fresh applications for amendment and to transfer the concluded case to a different court.

8. My take is that the parties should in the circumstances of this case, await the judgment of the court and depending on the outcome move the court appropriately.

9. For the above reasons I find that the applications are misconceived and misplaced. Consequently, I strike them out with no orders as to costs.

10. I direct that the proceedings taken by Amin J. at the hearing be typed so that this court can give directions on the pending judgement.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 1ST DAY OF JULY 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO COVID -19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17TH APRIL 2020.**

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

Ms Kamau for Wandabwa for Plaintiff.

Ms Wangare for Kihara for 2<sup>nd</sup> Defendant.

Ms Ndungu for Kihara for 1<sup>st</sup> Defendant.

Court Assistant: Sylvia.