



Zaoro & another v Cannon Assurance Company Ltd & 4 others (Environment and Land Case E065 of 2022) [2025] KEELC 4870 (KLR) (26 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4870 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E065 OF 2022**

YM ANGIMA, J

JUNE 26, 2025

BETWEEN

AHMED JUMA ZAORO 1ST PLAINTIFF

SIMON JAMVI MWANGALA 2ND PLAINTIFF

AND

CANNON ASSURANCE COMPANY LTD 1ST DEFENDANT

NATIONAL LAND COMMISSION 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

COUNTY SURVEYOR-KILIFI 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

RULING

A. 1st Defendant's application

1. Vide a notice of motion dated 04.07.2024 filed pursuant to Order 7 Rules 1 Orders 50 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the [Civil Procedure Act](#) (Cap 21), Section 146 of the [Evidence Act](#) (Cap.80), and all enabling provisions of the law, the 1st defendant sought the following orders;
 - a. This Honourable Court be pleased to direct that the firm of Daly Inamdar Advocates LLP was not properly on record for the 1st Defendant/Applicant.
 - b. This Honourable Court be pleased to grant the 1st Defendant/Applicant leave to file its Statement of Defence out of time.



- c. The Honourable Court be pleased to strike out from the record the 1st Defendant/Applicant's List of Witnesses and Witness Statements dated 14th April 2023 and grant leave to the 1st Defendant/Applicant leave to substitute the said witnesses.
 - d. The Honourable Court be pleased to strike out from the record the 1st Defendant/Applicant's List of Documents dated 14th April 2023 and grant leave to substitute the documents therein.
 - e. The Honourable Court be pleased to order re-opening of the plaintiffs/Respondents' case herein to allow the 1st Defendant/Applicant to cross-examine Plaintiffs/Respondents through its proper advocates on record.
 - f. The costs of this application.
2. The motion was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Betty Kanyagia on even date and her supplementary affidavit sworn on 25.10.2024. The 1st defendant stated that it was not aware of the existence of the suit until recently when it learnt that the firm of Daly & Inamdar LLP was purportedly acting for it even though it had not instructed the said firm. It was further pleaded that the said firm had filed a defence, list of witnesses and list of documents without its knowledge or consent.
 3. It was also the 1st defendant's case that the suit subsequently proceeded for hearing of the plaintiffs' case without its participation since the advocates purportedly on record for the company had no authority or instructions to act for it. The 1st defendant was thus of the view that the suit proceeded for hearing without being afforded a fair opportunity of being heard. It was contended that the persons who signed witness statements on behalf of the company were not even its employees and the person who was in communication with the said law firm was a former director of the company who was removed from office a long time ago for fraudulent conduct.

B. Plaintiff's response

4. The 1st plaintiff filed a replying affidavit sworn on 14.10.2024 in opposition to the application. He deposed that the 1st defendant was duly served with summons to enter appearance and that it was a stranger to the allegations contained in the 1st defendant's application. He deposed that he was not party to any internal wrangles within the 1st defendant company and that it should not be prejudiced by such disputes. It was contended that allowing the said application would delay the conclusion of the suit hence the 1st defendant should look for alternative means of resolving its grievances.

C. Response by Talwar Vishisht

5. The firm of Daly Inamdar Advocates LLP filed a replying affidavit sworn by Talwar Vishisht on 15.10.2024 in opposition to the application. He deposed that his late father one, Inderjit Talwar, was a founder of a company known as Evisa Investments Ltd which was a shareholder of Cannon Assurance Ltd. It was his case that pursuant to a share sale agreement dated 07.04.2014 the 1st defendant agreed to transfer the suit property to his late father (the deceased) as a divided in specie and even signed the relevant transfer documents in that regard.
6. It was deposed that due to the pendency of various civil suits involving the suit property the transfer could not be registered in the name of the deceased but it was understood by all concerned parties including owner of the property that the transfer would be registered upon conclusion of the various cases.



7. The deponent stated that he was the duly appointed administrator of the estate of the deceased and that the application was ill advised and otherwise an abuse of the court process. On the issue of legal representation, the deponent concluded as follows in paragraph 12 of his replying affidavit;

“That for these reasons it is only appropriate that this matter continue to be handled by the estate of the late Inderjit Talwar and advocates appointed and paid for by the estate.”

D. Directions on submissions

8. When this matter came up for directions it was directed that the said application shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the 1st defendant filed its submissions dated 16.01.2025 whereas the plaintiffs filed submissions dated 25.03.2025. The record also shows that the firm of Daly Inamdar Advocates LLP filed submissions dated 17.03.2025 on behalf of the estate of the deceased.

E. Issues for determination

9. The court has perused the motion dated 04.07.2024, the replying affidavits in opposition thereto as well as the material on record. The court is of the view that the following are the main issues for determination herein;
- a. Whether the 1st defendant has proved its allegations to the required standard.
 - b. Whether the 1st defendant is entitled to the orders sought in the application.
 - c. Who shall bear costs of the application.

F. Analysis and determination

a. Whether the 1st defendant has proved its allegations to the required standard

10. The court has considered the material and submissions on record on this issue. In paragraph 4.1 of the submissions filed by the firm of Daly & Inamdar Advocates LLP they submitted as follows;
- “Summons to enter appearance of instant suit were issued on 15.06.2022. The firm of Daly Inamdar Advocates received instructions from the estate of Inderjit Talwar filed a memorandum of appearance dated 27.06.2022.”
11. The court is of the opinion that the above submission coupled with the deposition in paragraph 12 of the replying affidavit of Talwar Vishisht constitute the clearest concession that the firm of Daly Inamdar Advocates was not appointed by the 1st defendant at all.
12. The material on record shows that the 1st defendant is still the registered proprietor of the suit property and was sued by the plaintiffs on that basis. The material on record also shows that the estate of the deceased has a claim over the suit property as beneficial owner. The estate of the deceased is, of course, entitled to litigate and establish its claim over the suit property. The court considers that the estate has locus standi to sue or claim what may be due to the estate. However, it has no right in law to hide behind the shadows and to clandestinely appoint an advocate to act on behalf of the registered proprietor. The estate had certainly no right to arrange for the filing of a defence, list of documents and witness statements secretly and clandestinely without the knowledge or consent of the registered owner merely because it is claiming a beneficial interest in the since property.



13. The court is thus of the view that all prior proceedings (including the part hearing) which took place are irredeemably defective and in complete violation of not only the Civil Procedure Act and Rules but also the constitutional rights of access to justice fair hearing under articles 48 and 50 of the Constitution of Kenya. The proceedings are for setting aside as a matter of right to pave way for a fresh start.

b. Whether the 1st defendant is entitled to the orders sought in the application

14. In view of the court's finding on the first issue, the answer to the second issue should be fairly straightforward. The 1st defendant has proved and uncovered the fraudulent representation of the company at the instance of the estate of the deceased or the person who purports to be the administrator of his estate. The 1st defendant has demonstrated that the defence, list of documents and witness statements were fraudulently filed on its behalf without its knowledge and consent.
15. The court is of the view that the course of justice has been incurably polluted. Perhaps the only way of redeeming the situation is by completely annulling all proceedings which have taken place to date so that the 1st defendant may file all necessary pleadings, documents, and statements through its duly instructed advocates. In the event, the court is of the view that the 1st defendant is entitled to the orders sought in the application without prejudice to the right of the estate of the deceased to apply to be joined as party in the proceedings.

c. Who shall bear costs of the application

16. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the Civil Procedure Act (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. In view of the court's finding that the fraudulent dealings were perpetrated by the administrator of the deceased, the court is of the view that Talwar Vishisht Inderjit Amarnath should bear costs of the application.

G. Conclusion and disposal orders

17. The upshot of the foregoing is that the court finds merit in the 1st defendant's application dated 04.07.2024. As a consequence, the court makes the following disposal orders;
- a. An order is hereby made that the firm of Daly Inamdar Advocates LLP is not properly on record or the duly appointed advocates for the 1st defendant.
 - b. An order is hereby made striking out all the pleadings, statements or other documents filed by the said firm purporting to act for the 1st defendant.
 - c. The 1st defendant is hereby granted leave to file its statement of defence, witness statements, list of documents and other necessary pleadings or documents in place of the ones which have been struck out within 21 days from the date hereof.
 - d. All prior proceedings including the partial hearing are hereby set aside to pave way for hearing de novo.
 - e. The administrator of the estate of the deceased one Talwar Vishisht Inderjit Amarnath shall pay the plaintiff and the 1st defendant costs of the application together with all costs of the proceedings which have been set aside.

Orders accordingly.



RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 26TH DAY OF JUNE, 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Ms. Muphumba for the plaintiff

Ms. Wanja for the 1st defendant

Ms. Nzisa for the 1st defendant

No appearance for the 2nd defendant

No appearance for the AG for the 3rd, 4th and 5th defendants

Mr. Lijoodi for the interested party

