



Mburu & 7 others v Zucchini Holdings Limited & 2 others; Equity Bank Limited (Interested Party) (Environment and Land Case Civil Suit 91 of 2010) [2025] KEELC 7342 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7342 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 91 OF 2010
CA OCHIENG, J
OCTOBER 29, 2025**

BETWEEN

**FRANCIS NGUGI MBURU 1ST PLAINTIFF
NYAMWEYA IRIES ABUGA 2ND PLAINTIFF
JULIA MWANIKI WAITITU 3RD PLAINTIFF
DOMINIC MUINDI MUYA 4TH PLAINTIFF
ESTHER WANGI KAMAU 5TH PLAINTIFF
TERESIA WANGUI KAMAU 6TH PLAINTIFF
SILAS ONDICHO MANU 7TH PLAINTIFF
GEOFFREY MWAURA KAIGAI 8TH PLAINTIFF**

AND

**ZUCCHINI HOLDINGS LIMITED 1ST DEFENDANT
MINTO TRAVELS LIMITED 2ND DEFENDANT
NERIFA HOLDINGS LIMITED 3RD DEFENDANT**

AND

EQUITY BANK LIMITED INTERESTED PARTY

RULING

1. What is before the Court for determination is the 7th Plaintiff's Notice of Motion application dated the 23rd June, 2025 where he seeks the



following Orders:

- a. Spent.
 - b. That the Honourable Court do grant leave to the Applicant to enjoin Sidian Bank as an Interested Party as well as removal and replace Equity bank.
 - c. That the Honourable court do give directions as pertains to status quo of the suit property being possessory and proprietary interest now held by the Defendants be recognized, the same remain alienated nor changed until final hearing and determination of the suit herein.
 - d. That the Chief Land Registrar be directed not to register any further interest on the suit property being LR No.209/9832 until directed otherwise by this Honorable Court.
 - e. That the Honourable court do order that the 3rd Defendant to appear for cross-examination.
 - f. That the costs of this application be in the cause.
2. The application is premised on grounds on its face and on the 7th Plaintiff's supporting affidavit. He avers that despite orders issued in 2010, which were served upon the Defendants, the same have been ignored severally and might end up complicating the issues. Further, that the 1st Defendant transferred the suit land to the 2nd Defendant, which also transferred it to the 3rd Defendant. He deposes that the Defendants' mortgaged the suit land to Equity Bank Limited from which a substantive amount in term of hundreds of millions was borrowed. He states that the Defendants have again mortgaged the suit land and borrowed Kshs. 140,000,000/= from Sidian Bank Limited. He claims they have seen recent activities where individuals claiming to be from KCB bank have been seen taking photographs of the suit land thus it should be protected.
 3. The application is opposed by the 3rd Defendant vide the replying affidavit of its Director, Zephania Gitau Mbugua. He avers that the 3rd Defendant became the registered owner of the suit land on 27th September 2007 vide purchase from the 1st Defendant and it was granted vacant possession. Further, that it has previously exercised its legal rights as owner by obtaining financial facilities using the title to the suit land as a collateral. He points out that facilities with the Interested Party registered on 30th September 2014 and 2nd October 2015 respectively, have been discharged and a new facility by Sidian Bank Limited registered on 14th September 2018. He reiterates that there is no evidence to support allegations that the suit land is encumbered afresh.
 4. The 7th Plaintiff also filed a further affidavit where he reiterated his averments and annexed a land search certificate of the suit land dated the 5th June 2025.
 5. The application was canvassed by way of written submissions.

Submissions

6. The 7th Plaintiff submits that the Court should issue status quo orders to avert substantial prejudice occasioned by the 3rd Defendant's continued Charging of the suit land, which raises a reasonable apprehension that should the Defendants' default in repaying the outstanding loans, the said suit land may be subjected to sale, thereby resulting in irreparable loss. To buttress his averments, the 7th Plaintiff relied on the following decisions: James Wangalwa & Another v Agnes Naliaka Cheseto [2012] KEHC 1094 (KLR) and Pinnacle Projects Limited v Presbyterian Church of East Africa, Ngong Parish & Another [2018] eKLR.



7. On its part, the 3rd Defendant submits that a status quo order is akin to an injunction and that the 7th Plaintiff has not met the threshold for grant of the same as set in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358. It submits that there is no law that prohibits it as the registered owner of the suit land, from using its title as a collateral. Further, that the Court Order alleged to have been violated restrained the 1st Defendant from interfering with the suit land pending hearing and determination of the application dated 4th March, 2010 while the facilities registered by the 3rd Defendant against the suit land were registered in 2014, 2015 and 2018 respectively, long after the said application dated 4th March, 2010 was heard and determined.
8. It also submits that it became the registered proprietor of the suit land on 27th September 2007 before the suit was filed and that there is no evidence that the suit land has been transferred during the pendency of the suit. Further, that it does not intend to interfere with the ownership of the suit land before this suit is heard and determined, thus there is no demonstrable threat that may result in irreparable damage to the Plaintiffs', should the status quo orders be refused.
9. On the prayer for its cross-examination, it submits that no ground has been cited in the application for the relief. Further, that the 7th Plaintiff also failed to demonstrate grounds to warrant joinder of Sidian Bank Limited as an Interested Party in this suit.
10. To buttress its averments, the 3rd Defendant also relied on the following decisions: *Skov Estate Limited & 5 Others v Agricultural Development Corporation & Another* ELC No 251 of 2012 [2015] eKLR and *Francis Kariuki Muruatetu & Another v Republic* [2016] eKLR.

Analysis and Determination

11. Upon consideration of the instant Notice of Motion application including the respective affidavits and submissions, the issue for determination is whether this Court should grant an Order of Status Quo and if Sidian Bank Limited should be joined as an Interested Party in these proceedings while Equity Bank be removed therefrom.
12. The 7th Plaintiff contends that he is apprehensive that the suit land is in danger of being interfered with, citing an alleged Kshs.140 million mortgage to Sidian Bank Limited, which he claims is geared towards defeating justice. On its part, the 3rd Defendant submits that it has no intention of interfering with the suit land and that the facility with the said bank was registered in 2018. Further, that it became the registered proprietor of the suit land before this suit was filed and there is no law barring it, from using the said land as a collateral.
13. The purpose of a status quo order was explained in *Kenya Airline Pilots Association (KALPA) v Co - Operative Bank of Kenya Limited & another* [2020] eKLR as follows:

“... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”
14. The 7th Plaintiff has sought to rely on Orders issued in 2010 but I note this suit had been dismissed for want of prosecution on 25th April, 2017, hence the said Orders lapsed. I note that this suit was reinstated and on 28th September, 2023, Justice Mbugua had declined to grant to the 1st to 6th Plaintiffs' restraining Orders in respect to the suit land and directed that the matter to proceed for hearing. It is my considered view that the 7th Plaintiff now seeks Status Quo Orders to defeat the impugned decision. It is trite that this Court cannot sit on Appeal to Justice Mbugua's Orders. Further, the 7th Plaintiff except



for claiming that the suit land is Charged, has not demonstrated what physical changes the Defendants' have done on the suit land to warrant the Orders of Status Quo. In that regard, I will decline to grant any orders of Status quo at this juncture.

15. The 7th Plaintiff has further sought to have the 3rd Defendant to be cross examined, yet the Plaintiffs' case is still ongoing. It is trite that the Plaintiffs' have to close their case first, before the suit can be set down for defense case. I find that he did not lay a basis for seeking the order for cross-examination of the 3rd Defendant and will decline to grant the order as sought.
16. On joinder of Sidian Bank Limited, it has emerged that there is a Charge it is holding over the suit property for about Kshs.140 million, which was registered on 14th September 2018. From the averments in the 7th Plaintiff's affidavit including annexures, except for the Charge to Sidian Bank Limited, he has not proffered any evidence to support allegations that the suit land is encumbered afresh.
17. In the case of Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] eKLR, the Court defined an Interested Party as follows:

“...one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”
18. While in the case of Meme v. Republic [2004] KLR cited by the Court of Appeal in Pravin Bowry v John Ward and Another [2015] eKLR, it provided parameters for joinder of parties as follows:

“(i) Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings; (ii) Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and (iii) Where the joinder will prevent a likely course of proliferated litigation.”
19. In associating myself with the decisions cited, since Sidian Bank Limited holds a Charge in respect to the suit land, I opine that its presence in these proceedings is key as it will be affected by the outcome of this suit. Further, its joinder will prevent likely course of further litigation. I further find that Equity Bank is no longer a necessary party herein as it does not hold a Charge over the suit land and will remove it from these proceedings. In the circumstance, I will allow Sidian Bank Limited to be joined in these proceedings as an Interested Party and direct the Plaintiffs to serve it with the Pleadings within fourteen (14) days from the date hereof. Upon service, I direct the Interested Party to file and serve its response in twenty-one (21) days.
20. It is against the foregoing that I find the instant Notice of Motion application partially successful and I will only allow prayer No. (b) and dismiss prayers No. (c), (d) and (e).
21. Costs will be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF OCTOBER, 2025.

CHRISTINE OCHIENG

JUDGE.



In the presence of:

7th Plaintiff in person

Omayio for the 1st - 6th, 8th Plaintiffs

Opole holding brief for Munge for 3rd Defendant

Court Assistant: Joan

