



**Simon v Adel (Environment & Land Case E006 of 2023)
[2024] KEELC 770 (KLR) (20 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 770 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE E006 OF 2023
GMA ONGONDO, J
FEBRUARY 20, 2024**

BETWEEN

MICHAEL OCHOO SIMON PLAINTIFF

AND

SALMON KWANYA ADEL DEFENDANT

RULING

1. This ruling is in respect of an application by way of Notice of motion dated 27th September 2023 brought under, inter alia, Section 80 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya and Order 45 of the *Civil Procedure Rules*, 2010 by the defendant/applicant, Salmon Kwanya Adel through Aluoch Odera and Nyauke Advocates seeking the following order;
 - a. The honourable court be pleased to review, vary and/or set aside its entire ruling delivered on 27th September 2023.
2. The application is anchored on the supporting affidavit of fifteen paragraphs sworn on even date by Salmon Kwanya Adel, alongside the annexed documents marked as SKA-01 to SKA-05 which include; a copy of the plaint, a copy of judgment of the trial court, a copy of judgment of this court, a copy of the claim filed at the Rent Restriction Tribunal and a copy of a hearing notice. Also, the same is founded upon grounds 1 to 6 and the same are:
 - a. There is a glaring error apparent on the face of record as this same court had rendered itself on the subject matter between the same parties and cannot at the same time come up with a different position on the same subject matter and between the same parties.
 - b. Based on the new and compelling evidence, it is not tenable that the orders granted can be made in the prevailing circumstances.



- c. The same court cannot render itself over the same issues between the same parties and issue parallel verdicts.
 - d. The court lacks jurisdiction to entertain the main suit based on its judgment in Homa Bay ELC Appeal No. E005 of 2021.
 - e. It is in the interest of justice that this application be allowed.
3. Briefly, the applicant laments that he had filed a suit at the trial court seeking eviction orders against the respondent herein and the same was allowed and the orders sought granted. That the respondent herein lodged an appeal against that decision in this court. That this court allowed the appeal and held that the trial court lacked jurisdiction to entertain the initial suit. That this court further held that the claim should have been initiated in the Rent Restriction Tribunal. That subsequently, the applicant lodged the dispute at the Rent Restriction Tribunal and the same is active therein.
 4. The respondent through Quinter Adoyo and Company Advocates filed a replying affidavit dated 12th February 2024 on 13th February 2024. He averred that there is no error apparent on the face of the record, a new and important matter of evidence or any other sufficient cause or reason to warrant a review of the ruling and orders of this court. That further, the order whose review is sought was never extracted or annexed to the application for review, which is fatal. He opposed the application and termed it untenable.
 5. Hearing of the application proceeded by way of written submissions but none of the parties filed submissions herein.
 6. In the foregone, has the applicant established his case for grant of the order sought in the application?
 7. This court has the mandate to grant preservation orders under Section 13 (7) (a) of the *Environment and Land Court Act*, 2015 (2011) as read with Sections 3 and 3A of the *Civil Procedure Act*, Chapter 21 Laws of Kenya which provide for inherent and special powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Furthermore, in the case of *Fredrick Otieno Outa v Jared Odoyo Okello & 3 others* (2017) eKLR, the Supreme Court of the Republic of Kenya held that the court may invoke its inherent powers, if circumstances so demand, to do justice to all.
 8. The applicant stated that following this court's judgment delivered on 8th March 2023 in Homa Bay ELCA No. E005 of 2021, the applicant lodged the dispute at the Rent Restriction Tribunal. That this court cannot therefore, entertain an application or suit between the same parties and over the same parcel of land.
 9. I have perused this court's ruling dated 27th September 2023 and note that the court directed that the suit land be preserved pending the hearing and determination of the issues of law raised in the pleadings. Indeed, in order for the issues raised in the main suit to be determined, there is need to preserve the subject matter of the suit in accordance with the doctrine of *lis pendens* as held in *Ogada v Mollin* (2009) KLR 620.
 10. Furthermore, the applicant's notice of preliminary objection on points of law as discerned in his pleading to take precedence and be heard on priority basis herein; see *Mukisa Biscuits Manufacturing Ltd v West End Distributors* (1969) EA 696 at 700.
 11. Accordingly, the application by way of a Notice of motion dated 27th September 2023, is hereby held in abeyance pending the outcome of the Preliminary Objection.



12. No orders as to costs of this application.

13. It is so ordered.

DELIVERED, DATED AND SIGNED AT HOMA BAY THIS 20TH FEBRUARY 2024.

G.M.A ONGONDO

JUDGE

Present

1. Mr. S. Nyauke, learned counsel for the defendant/applicant
2. Mr. J. Otieno holding brief for Ms. Quinter Adoyo, learned counsel for the plaintiff/respondent
3. Luanga, Court Assistant

