



REPUBLIC OF KENYA



**Benzai v Tasna Investments Limited & 2 others (Environment & Land Case
163 of 2021) [2024] KEELC 3786 (KLR) (11 March 2024) (Directions)**

Neutral citation: [2024] KEELC 3786 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE 163 OF 2021**

**AE DENA, J
MARCH 11, 2024**

BETWEEN

MARYAMU JUMAA BENZAI PLAINTIFF

AND

TASNA INVESTMENTS LIMITED 1ST DEFENDANT

ATHUMANI NGOVI OMARI 2ND DEFENDANT

LAND REGISTRAR, KWALE 3RD DEFENDANT

DIRECTIONS

1. This suit was scheduled for hearing on 13/10/22. On 4/10/22 the Plaintiffs filed an application dated 3/10/22 for joinder of 47 as necessary parties and or Plaintiffs and to amend the Plaint to incorporate their grievances. It is deponed in their supporting affidavit *inter alia* that they are party of the family members actually resident on the suit property.
2. On 21/11/22 this case was stood over generally at the instance of the court, to allow the resolution of a long standing dispute on representation of the parties herein specifically the Plaintiff who has brought this suit on behalf of other family/clan members. The application dated 3/10/22 was consequently not heard.
3. The Deputy Registrar ELC set down the suit for Notice to Show Cause why the suit should not be dismissed for want of prosecution on 23/01/24.
4. The Plaintiff through their new Counsel Kinyua Muyaa & Company advocates in response to the NTSC filed an affidavit showing cause why the suit should not be dismissed and an application dated 7/11/23. The same was placed before this court *ex parte* under Certificate of Urgency. The court scheduled the application for hearing on 23/01/23 alongside the NTSC.



5. The application set out the reasons for the delay but more substantively seeks the striking out of the 1st and 2nd Defendants Statement of Defence dated 6/5/21 and judgement on admission against the said Defendants as prayed in the Plaint.
6. On the 23/01/23 the court dispensed with the Notice show cause having been satisfied with the explanation given by the Plaintiffs in the affidavit to show cause sworn on 7/11/23 by Maryamu Jumaa Benzai.
7. On the application dated 7/11/23 it emerged that Mr. Hamza for the 1st Defendant had not been served with the same and I directed that he be served and respond thereto within 10 days and Mr. Kinyua to further respond within 3 days of service. I gave directions on the disposal of the application by way of written submissions. The Applicant was to file their written submissions within 10 days of expiry of the 10 days given to Mr. Hamza to respond to the application. The Respondents were given 10 days to file their submissions upon service by the Plaintiff.
8. On the application dated 3/10/22 Mr. Kinyua informed the court that he had not seen the same in the file he had inherited from the previous counsel. I gave directions that the same be served and responses filed within 7 days. I reiterated the above order on disposal. Both applications were fixed for hearing on 21/02/24 but the court did not seat. The mater was rescheduled to 28/02/24.
9. In the intervening period the 1st Defendant on 26/02/24 filed Notice to the 2nd Defendant under Order 1 Rule 24 (Defendant claiming against a co-Defendant. It is contended that the 2nd Defendant presented to the 1st Defendant he had good title having obtained a transfer in his names and consent to transfer from the co-owners the suit property for the sum of Kshs. 7,000,000/-. The 1st Defendant having received information that the 2nd Defendant obtained the said title through fraudulent misrepresentation (particulars are set out) claims the purchase price and expenses incurred in the transaction.
10. On 28/02/24 Mr. Hamza and Mr. Kinyua disclosed to the court that they had discussed the matter at length with a view to coming up with a solution . That a proposal was made to Mr. Kinyua which he rejected. Mr. Kinyua noting that the 1st Defendant had not responded to the application dated 7/11/23 invited the court to allow the same. He pointed that the Notice of claim by the 1st defendant supported the Plaintiffs application to the extent that it admits that the 2nd Defendant did not have good title. Mr. Kinyua further stated he did not have any objection to the Notice of claim. That upon the court allowing the application dated 7/11/23 the file be left open to leave room for the 1st Defendant to air any views against the 2nd Defendant. Mr. Kinyua further suggested that the compensation from the NLC can be paid to the person with the title.
11. Mr. Hamza for the 1st Defendant agreed with Mr. Kinyua to some extent but emphasized that before any action is taken by the court directions on the hearing of the Co-Defendant claim should be given including the manner for the release of the title.

Directions

12. Having considered the foregoing, the following directions hereby issue; -
 1. The Plaintiff to decide on the application for joinder which appears to have been objected to through the Replying Affidavit Maryamu Jumaa Benzai sworn on 24/01/24 and filed on 25/01/2024.
 2. I note that Mr. Shimaka Counsel for the 2nd Defendant did not appear in court on 28/02/24. Mr. Hamza held the brief of Mr. Shimaka for the 2nd Defendant on 23/01/23 but did not on



28/02/24. I have read the Affidavit of Service by Mr. Kefa Karenga which does not indicate that the firm of Marende Necheza who came on record on 26/4/22 was served. The prayers sought in the said application substantively affect the 2nd Defendant and it is in the interests of justice that he is heard on the application.

3. In view of (2) above the Plaintiff shall serve the 2nd Defendant with the application dated 7/11/23 by close of business on 12/03/24. The 2nd Defendant shall respond thereto within 7 days from 13/3/24 and the Plaintiffs shall respond further within 3 days of service of the 2nd Defendant's response should they deem it necessary.
4. It is not clear whether or not the 1st Defendant will participate in the application dated 7/11/23. The 1st Defendant is at liberty however to respond within 7 days of the date of these directions.
5. The application dated 7/11/23 shall be heard by way of written submissions. The Plaintiff shall file submissions within 7 days of service by the 1st and 2nd Defendant's responses. In the absence of service the Plaintiff shall file their submissions on the expiry of 7 days accorded to the respondents in (2) and (3) above.
6. On the Notice of claim by the 1st Defendant against the 2nd Defendant it is not clear if the same has been served either upon the 2nd Defendant in person or the firm of M/s Marende Necheza. There is no Affidavit of Service in this regard. Mr. Hamza should serve the same upon the 2nd Defendant by close of business on 12/03/24.
7. The 2nd Defendant shall reply to the said Notice of Claim against Co- defendant within 14 days of service and the 1st Defendant may respond further within 7 days.
8. The application dated 7/11/23 is hereby set down for hearing on 18/04/24.
9. Further directions on the main suit and the Notice of Claim against co- defendant herein shall await the outcome of the above application.
10. The date 13/03/24 set down for mention is hereby vacated.

DATED THIS 11TH MARCH 2024.

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**A.E DENA
JUDGE.**

