



**Atika v Mosoti & 2 others (Environment & Land Case E007 of 2024)
[2025] KEELC 856 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 856 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE E007 OF 2024**

M SILA, J

FEBRUARY 26, 2025

BETWEEN

SAMWEL ATIKA PLAINTIFF

AND

MARIAH MOSOTI 1ST DEFENDANT

OMANWA MOENGA JOHN 2ND DEFENDANT

LAND REGISTRAR – KISII COUNTY 3RD DEFENDANT

RULING

1. The application before me is that dated 26 August 2024 filed by the plaintiff. It seeks an order of prohibition to restrain the 2nd and 3rd defendants from transferring, charging, or in any way disposing the land parcel West Kitutu/Bomatara/3794 (the suit land) until the suit is heard and determined. The applicant also wants an order of injunction to restrain the defendants from interfering with the applicant’s quiet possession of the suit property. The application is opposed.
2. I see that the applicant commenced suit through a plaint filed on 17 May 2024. He pleaded that he had filed an Originating Summons being the suit Kisii ELC No. 155 of 2013 against the 1st defendant/respondent for a declaration that he has acquired title to the suit land and placed a caution. While the case was pending, he avers that the caution was removed and the property transferred to the 2nd defendant/respondent. In this suit he asks for the following orders:
 - a. A declaration that the sale and transfer of the suit land by the 1st defendant to the 2nd defendant and effected by the 3rd defendant in collusion is fraudulent, null and void ab initio.
 - b. A prohibitory order restricting the 2nd and 3rd defendants from transferring, charging or in any way disposing of the suit property until this suit is heard and determined.



- c. An order of injunction restraining the defendants, their agents and/or servants from in any way evicting or interfering with the plaintiff's quiet possession of the suit land until this suit is heard and determined.
 - d. Costs of this suit.
 - e. Any other or further relief as the court may deem fit to grant.
3. Together with the plaint, the applicant filed an application dated 16 May 2024 seeking the same orders as those sought in the present application. The application was dismissed for non-attendance on 24 July 2024. Subsequently this application was filed on 27 August 2024.
 4. The 2nd respondent has filed a replying affidavit to oppose the motion. He avers that he purchased the suit land and the land was transferred to him. He deposes that the applicant is not a buyer and he has not annexed anything to show how he is related to the suit property. He denies any fraud in the manner the property was transferred to him.
 5. I have considered the application. I am convinced at the outset that this application is for dismissal. First, there was already a similar application which the applicant failed to prosecute and was dismissed. I am of opinion that it is an abuse of the process of court for an applicant to continuously file applications seeking similar orders to one that has already been dismissed. The proper cause would have been to seek a reinstatement of the application that was dismissed for non-attendance not file a new one. The risk to the administration of justice is that a party can very well file applications, fail to prosecute them, and continuously bombard the other party with subsequent similar applications. I do not think that this augurs well for the administration of justice.
 6. The above aside, even on merits the application will still fail. The applicant has not disclosed his interest in the suit property. One cannot simply come to court for a declaration that a property has been fraudulently transferred to another person without disclosing what interest he has. I ask myself, so what if the court declares that the property was transferred to the 2nd respondent fraudulently, what should the court then do? The applicant is not seeking any order for the property, and it would be superfluous to declare a sale as null without the person asking for that declaration pressing for any orders in his favour. I am thus not persuaded that a prima facie case has been made out in order for this court to issue an order of injunction or an order restricting dealings over the suit land.
 7. The effect is that the application is hereby dismissed with costs.
 8. Orders accordingly.

DATED AND DELIVERED THIS 26 DAY OF FEBRUARY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of:

Mr. G.J.M Masese for the plaintiff/applicant

Mr. Mokaya for the 1st & 2nd defendants/respondents

Mr. Wabwire State Counsel for the 3rd defendant/respondent

Court Assistant – Michael Oyuko

