



**Munguti & 2 others v Kinuthia & 3 others (Environment & Land Case
184 of 2017) [2024] KEELC 3598 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3598 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 184 OF 2017**

**A NYUKURI, J
APRIL 29, 2024**

BETWEEN

**MATHEW MUANGE MUNGUTI 1ST PLAINTIFF
BENEDICT KILONZO MUANGE 2ND PLAINTIFF
STEPHEN MUSAU MUANGE (SUING AS ADMINISTRATORS AND
LEGAL REPRESENTATIVES OF THE LATE MUANGE MUSAU -
DECEASED) 3RD PLAINTIFF**

AND

**HENRY KURIA KINUTHIA 1ST DEFENDANT
LAND REGISTRAR, MACHAKOS 2ND DEFENDANT
KOMAROCK RANCHING & FARMING SOCIETY LIMITED 3RD
DEFENDANT
KOMAROCK HOUSING COOPERATIVE SOCIETY LIMITED 4TH
DEFENDANT**

RULING

1. Vide a notice of motion dated 23rd March, 2023, the plaintiff/applicant sought the following orders:-
 - a. That this Honourable Court be pleased to order the 2nd defendant/respondent to furnish the applicant with the following documents: -
 - i. A copy of the green card giving rise to plot no. Donyo Sabuk/Komarock Block 1/547.
 - ii. Mutation forms for subdivision of plot no. Donyo Sabuk/Komarock Block 1/547.



- iii. Current search certificates for plot no. Donyo Sabuk/Komarock Block 1/62415 and Donyo Sabuk/Komarock Block 1/62416.

as the applicant intends to use the documents in this case.

- b. Costs be provided for.
2. The application is anchored on the affidavit sworn by the 1st plaintiff on 23rd March, 2023. The applicant's case is that the ownership of all that parcel known as Donyo Sabuk/Komarock Block 1/547 (hereinafter known as the 'Suit Property') was fraudulently changed and transferred from the deceased who died in 1991 to the 1st defendant.
3. He stated that the suit property was never sold to anybody and therefore it remains a mystery how the plot ended up in at the hands of the 1st defendant. He stated that they have further learnt that the suit property was further subdivided into plots numbers Donyo Sabuk/Komarock 1/62415 and Donyo Sabuk/Komarock 1/62416.
4. He further stated that attempts to obtain the official search were denied by the respondents and that they should be compelled to produce the documents since they are in their custody as the applicants intend to use the said documents in this case as evidence.
5. The application was opposed. Henry Kuria Kinuthia the 1st defendant filed a replying affidavit dated 2nd November 2023. He deposed that the applicant was obligated to obtain relevant documents at the point of filing this suit and that he has delayed for six years. He stated that the applicants sought to introduce new documents not initially served with pleadings which will amount to an ambush contrary to Article 50 of the Constitution. Further that the applicants have not shown any efforts in getting the sought documents.

Analysis and determination

6. I have considered the application, and the response and in my considered view, the only issue for determination is whether the application is merited. Section 3A of the Civil Procedure Act grants this court inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.
7. In the instant matter, the suit property is alleged to have been subdivided into parcels Nos. Donyo Sabuk/Komarock 1/62415 and Donyo Sabuk/Komarock 1/62416. That allegation has not been contested by the respondents yet the 2nd defendant has neglected to avail official searches and green card to the applicant. The suit herein concerns the suit property and therefore if the same has been subdivided, it is only just that all the parties are aware of such subdivision to enable the court determine the real question in dispute over the correct land registration number so that court orders are not made in vain. Although the 1st defendant alleged that the documents sought to be introduced are new and it will amount to an ambush to grant the orders sought, it is my view that the defendant will have opportunity to amend his defence and also file further documents, if need be and therefore the question of ambush and violation of Article 50 of the Constitution does not arise.
8. In the premises, I find and hold that the application dated 24th March 2023 is merited and the same is hereby allowed as prayed with no order as to costs.
9. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 29TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM



A. NYUKURI

JUDGE

In the presence of:

Mr. Mutuku for plaintiffs

Ms. Mutuku holding brief for Mr. Munyao for 3rd and 4th defendants

Mr. Muema for 1st defendant

Court assistant – Abdisalam

