



**Kide & another v Sawe & 3 others (Environment & Land Case
E007 of 2024) [2024] KEELC 4092 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4092 (KLR)

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

FO NYAGAKA, J

MAY 21, 2024

BETWEEN

PHILIP PKOPUS KIDE 1ST PLAINTIFF

PAUL KIDE 2ND PLAINTIFF

AND

SIMON KIPSANG SAWE 1ST DEFENDANT

**DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER TRANS-
NZOIA 2ND DEFENDANT**

DIRECTOR LAND ADJUDICATION AND SETTLEMENT 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. Before me is an oral application for determining the status quo in this matter. The application followed the filing of an application dated 20/02/2024 by the plaintiffs in which they sought a temporary injunction against the defendants over the occupation, use and/or alienation of the parcel of land known as Chepchoina Settlement Scheme Phase 11 plot No. 576 measuring approximately 2.04 Ha.
2. When the application came before me at the ex parte stage for issuance of the orders, I was of the view that it be served first. When that was done the parties appeared before me for further directions upon which the issue of maintaining the status quo arose. However, the parties could not agree on what the status quo on the land was and both the plaintiffs and 1st defendant claimed the same to be in their favour. This prompted the court to summon the Area Chief to give independent information regarding the issue. The Area Chief, one Davis K. Walunyo attended court and gave a sworn oral account of the position on the ground. He stated that the 1st defendant had been in occupation and use of the parcel of land in issue since December, 2022 to date. He stated that in the previous year the



said party had planted and harvested maize on the suit land and that during the current year he had planted maize and put up a structure in which his servant resided. He state further that prior to the year 2023 the plaintiffs, specifically the 2nd defendant was the one who used to farm the parcel.

Issues Analysis and Determination

3. I have carefully listened to the oral account of the Area Chief of Chepchoina Settlement Scheme. I have considered the evidence both in answer to cross-examination and examination in-chief. The only issue for determination herein is what the status quo on the parcel of land is.
4. Bryan Gamer [2019] *Black Law Dictionary* 11th Edition: Thompzon Reuters St. Paul M.N. p.173 defines status quo as “state in which” or “the situation that currently exists”. In my understanding of this meaning statues quo refers to the state of something at a particular point in time when maintained as it is at the time.
5. In Nairobi Civil Appeal No. 33 of 2012, *Shimmers Plaza Limited -vs- National Bank of Kenya Limited* [2015] eKLR the court defined status quo to mean “the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events”.
6. The purpose of maintenance of the status quo in relation to litigation cannot be gainsaid. It is one of the very foundational stilts of observing lis pendens. It preserves the subject matter, with the effect that neither contending party has an advantage over the other in relation to the use of the subject matter from the time the order is issued forward up to the time when the court gives appropriate orders or as stated even upon which the status quo is predicated occurs or the law automatically causes it to come to an end.
7. Of course status quo may be altered by natural or even manmade occurrences of which neither parties are to blame, in which case neither party can complain about the variation. For instance, if a flood occurs and sweeps away crops growing or an earthquake destroys a standing structure. In *Mugab -vs- Kunga* [1988] KLR 748 the Court of Appl gave the purpose of issuance of orders of status quo. The court held:

“Status quo orders should always be issued for purposes of preserving the subject matter. The court’s practice direction vide Gazette Notice No. 5178/2014 have follow suit...”
8. In the instant case the issue was for the court to find out the status quo in this matter, that is to say, what is the current state of land parcel number Chepchoina Settlement Scheme Phase 11 plot No. 576. The Area Chief has stated that it is the 1st defendant who is in occupation and use since 2022. He has planted maize and put up a structure thereon. Thus, the situation is as it is put forth by the Area Chief and not the disputing parties, particularly the plaintiffs.
9. Thus, I direct that the status quo to be maintained on the property is that the 1st defendant and/or his agents remain in occupation and use. The structure he has put on the land to remain as it is. The crops that he has planted may be harvested by him or his agents and a repeat of cultivation of crops of a similar nature or others of a short terms period, not growing more than a year before harvest may henceforth be planted. He should not plant trees or other perennial crops. He should not cut down trees growing on the land or quarry the same as to change its character, pending the hearing and determination of the suit, which is expected to be concluded within 360 days.
10. The defendants are granted leave to enter appearance and file defence within 15 days although the law provides for a longer period. The plaintiff shall file and exchange a trial bundle within 15 days of service



of the defence. The defendants to file theirs and serve within 15 days of service of the plaintiffs'. The matter be mentioned on 16/07/2024 for compliance with Order 11 and fixing a hearing date.

11. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE IN OPEN COURT THIS 21ST DAY OF MAY, 2024.

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC KITALE

