



**Papiyo Investment Limited v Murero & 3 others (Environment & Land  
Petition E006 of 2024) [2024] KEELC 4766 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4766 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND PETITION E006 OF 2024**

**CG MBOGO, J  
JUNE 20, 2024**

**BETWEEN**

**PAPIYO INVESTMENT LIMITED ..... PETITIONER**

**AND**

**WILLIAM MURERO ..... 1<sup>ST</sup> RESPONDENT**

**DANIEL MURERO ..... 2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR, NAROK ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. On 14<sup>th</sup> June, 2024 while this matter was coming up for directions as to the disposal of the application dated 28<sup>th</sup> May, 2024, Mr. Michuki, the learned counsel for the petitioner/ applicant sought for orders of *status quo* in the interim. The learned counsel submitted that given that this is a constitutional petition, where the petitioner has laid out the violation of his rights under Article 40 of the Constitution by producing a title deed and green card, the court should exercise its power under Article 23 to preserve the substratum of the petition. He submitted that this petition was precipitated by the indication that the 3<sup>rd</sup> and 4<sup>th</sup> respondents were trying to remove a caveat, and that if conservatory order is not granted, the petition will be rendered nugatory and a mere academic exercise, and that it is only right that a conservatory order be issued in the interim.
2. Mr. Kinyanjui, the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that the learned counsel for the petitioner/ applicant has shifted the goal post, since he began by asking for an order of status quo, and concluded by seeking for conservatory orders which are 2 distinct issues for the court to exercise its discretion. He submitted that the status quo has to be ascertained and known beyond dispute. He relied on the classical English case of *Thomson vs Park* Vol 1[1948] All ER. He went on to submit that the 1<sup>st</sup> and 2<sup>nd</sup> respondents by a copy of certificate of grant of letters of administration, the suit property



- is indicated in the grant as being held by the 1<sup>st</sup> and 2<sup>nd</sup> respondents in trust for the beneficiaries of the estate of John Murero. Further, he submitted that looking at page 23 of the replying affidavit, the certificate of title is in the name of the 1<sup>st</sup> and 2<sup>nd</sup> respondent, which is the record as held by the 3<sup>rd</sup> respondent.
3. The learned counsel submitted that according to the 1<sup>st</sup> and 2<sup>nd</sup> respondents, status quo means that they are the holders of the title as trustees on behalf of the beneficiaries. Further, he submitted that when there are contesting claims, the issue of status quo becomes a contested issue.
  4. The learned counsel further submitted that the alleged title is not defensible in law for violating Article 40 (6) of the Constitution by reason of the trust created in succession cause no. 95 of 2006 vesting in them to hold the suit property in trust for the beneficiaries of the estate. The learned counsel submitted that there being no answer to their cross-petition, the court cannot issue any order at this stage.
  5. Lastly, the learned counsel submitted that the petitioner/ applicant was obligated to lay down all the material evidence before court, and the question that begs is, was the material placed before court by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, and how did they derive a separate title separate from their trustees? He submitted that the only person who could resolve that conflict between the petitioner and the 1<sup>st</sup> and the 2<sup>nd</sup> respondents is the 3<sup>rd</sup> respondent who is not before court.
  6. In conclusion, the learned counsel submitted that if an order were to be issued at this stage, there are 2 different titles, and to avoid that, the court has not been shown that there is a life and death situation. He urged that the court should refrain from venturing into that realm, and if the petitioner believes it will suffer injury in any way, the court has not been told the degree, the nature and character of the injury. He further submitted that in any event, the suit property is capable of being valued and the petitioner/ applicant can be compensated.
  7. In reply, Mr. Michuki, the learned counsel for the petitioner/ applicant submitted that a conservatory order and an order of status quo are one and the same as stipulated under the Constitution. He relied on the case Nakuru High Court Civil Appeal Invesco Assurance Co v MW (Minor suing thro' next friend and mother (HW)) [2016] eKLR, where it was held that a status quo is a remedy to preserve the subject matter. Further, he submitted that for all intents and purposes, a conservatory is an order to preserve the status quo pending the hearing of the suit. He also submitted that the notice of motion is clear that there should be no dealing in the suit property, and that there was a transfer to the petitioner by the two respondents and subsequently another title was issued to the two respondents, which is the violation that they have pleaded.
  8. The learned counsel further submitted that trustees can be sued for actions taken under that trusteeship. He submitted that they are yet to respond to the cross-petition given that it was served on 12<sup>th</sup> June, 2024, and that they have not acquiesced to the pleadings in the cross-petition which should not prejudice their quest to get conservatory orders. The learned counsel further submitted that there was an issue of conflict being resolved by the 3<sup>rd</sup> respondent, who has been served with the application, and the court should make the necessary implication that he does not oppose the application.
  9. In conclusion, the learned counsel submitted that since 29<sup>th</sup> May, 2024 when a conservatory order was in place until the 12<sup>th</sup> June, 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have not placed any evidence of prejudice that they will suffer. With regard to valuation of the land and damages being assessed, the learned counsel submitted that it is not a consideration in the grant of conservatory order as it is in the realm of public law.
  10. I have considered the submissions by the learned counsel for the petitioner/ applicants as well as the 1<sup>st</sup> and 2<sup>nd</sup> respondents. It is necessary to note that the notice of motion dated 28<sup>th</sup> May, 2024 was filed



under a certificate of urgency. On 29<sup>th</sup> May, 2024 this court certified the matter as urgent, and granted prayer (b) of the application by staying all dealings and proceedings, including the caution hearing that was scheduled for 30<sup>th</sup> May, 2024 with relation to all that property known as title number Cis Mara/ Lemek/ 190 for a period of 14 days.

11. From the application, it is clear that prayer (b) was spent as it was to subsist for a period of 14 days only. The said prayer did not seek conservatory orders of any further dealing by the respondents after 30<sup>th</sup> May, 2024. Having considered the submissions by the learned counsel, there is risk of pre-empting the application which has been slated for ruling on 15<sup>th</sup> August, 2024 since the parties went to a great extent to submit on the substance of the application. I am careful that the only prayer left to determine that is the subject of the instant application is for the grant of conservatory orders pending the hearing and determination of the petition. If say I am to determine whether or not conservatory orders should issue or whether status quo ought to be in place, to a large extent I will have dealt with the application. This will deny the parties the chance to comply with the directions of this court issued on 13<sup>th</sup> June, 2024, which would be a miscarriage of justice.
12. That said, I am hesitant to grant the prayers by the petitioner/ applicant at this stage. It is advisable that the parties do comply with the directions of the court issued on 13<sup>th</sup> June, 2024. Orders accordingly.

**DATED, SIGNED & DELIVERED VIA EMAIL THIS 20<sup>TH</sup> DAY OF JUNE, 2024.**

**HON. MBOGO C.G.**

**JUDGE**

**20/06/2024.**

In the presence of: -

Mr. Meyoki Pere – C. A

