



**Ahmed v Varsani & 3 others (Environment & Land Case
E013 of 2023) [2024] KEELC 4779 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4779 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E013 OF 2023
CA OCHIENG, J
JUNE 19, 2024**

BETWEEN

SALAT SOMO AHMED PLAINTIFF

AND

JADAVJI GOVIND VARSANI 1ST DEFENDANT

PREMBAI JADAVJI VARSANI 2ND DEFENDANT

THE CHIEF LAND REGISTRAR 3RD DEFENDANT

THE REGISTRAR OF LANDS MAVOKO 4TH DEFENDANT

RULING

1. What is before Court for determination are the 2nd Defendant's Notice of Motion applications dated the 6th December, 2023 and 15th February, 2024. In the application dated the 6th December, 2023, the 2nd Defendant seeks the following Orders:
 - a. Spent.
 - b. That there be a stay of the Honourable Court's Orders issued on 20th November, 2023.
 - c. That the Honourable Court be pleased to set aside its Orders of 20th November, 2023.
 - d. That the Applicants be granted leave to file their response to the Plaintiff's Application dated the 25th April, 2023 and hear the application inter partes.
 - e. That the Honourable Court be pleased to summon the OCS Syokimau Police Station to explain circumstances surrounding events over the subject properties (LR Nos. 12715/110 & 12715/14287) and the security surrounding them.
 - f. That the costs of this application be provide for.



2. In the application dated the 15th February, 2024, the Applicant and 2nd Defendant seeks the following Orders:
 - a. That Vipul Govind Varsani ('the Applicant') be joined to this suit as Defendant and the Court do hereby direct the amendment of the Plaint as may be necessary to join the Applicant as Defendant.
 - b. That the Court do hereby order that the parties be returned to the status quo as at 13th March, 2023 by more specifically directing the 2nd Defendant and the Applicant be returned in possession of LR No. 12715/110 and the Plaintiff be ordered to remove its agents/guards therefrom.
 - c. That the OCS Syokimau Police Station is hereby ordered to provide security.
 - d. That the costs of this Application be provide for.
3. The Plaintiff opposed the two instant applications by filing a replying affidavit sworn by Salat Somo Ahmed where he deposes that he is the registered proprietor of land parcel number LR No. 12715/14287 (Deed Plan No. 435868) Original Number 12715/110/3) delineated on Land Survey No. 435868 pursuant to subdivision of IR 44472/1 measuring 0.9150 hectares. He confirms that the Court issued orders of status quo on 13th March, 2023. He insists that he has been in possession of the suit property at the time the said status quo orders were issued. Further, that the 1st and 2nd Defendants refused/ neglected to comply with the said orders and instructed their agents including servants to destroy the property and evict him, out of the suit property. He insists that the 1st and 2nd Applicants have always had actual knowledge of the status quo orders and were not in possession of the suit land when the said orders were issued. Further, that he has been in possession of the suit land from 2019, with his agents. He contends that the Applicant has sought to be joined in these proceedings but has not annexed proof to show he is the son of the 1st and 2nd Defendants. Further, that the Applicant has neither proved the same nor produced sufficient proof to show his relationship with the Defendants.
4. The Applicant filed a further affidavit sworn by Vipul Jadavji Govind Varsani where he contends that the Plaintiff has not been in possession of the suit land as claimed. He deposes that it is the 1st and 2nd Defendants who have been in possession of the suit land since 1997 as evidenced by the fact that they were issued with a Beacon Certificate and obtained approvals in 2014 to construct the boundary wall, which they did in 2014. He explains that the 1st and 2nd Defendants paid for and connected water and electricity long before the Plaintiff's alleged purchase of the suit land. Further, that the water supply was connected on 2nd December, 2014 while the electricity supply on 10th March, 2022.
5. He reiterates that all the structures and vegetation on the suit land were put by the 1st and 2nd Defendants. Further, he denies that the 1st and 2nd Defendants invaded the suit land and claims on 6th December, 2023, it is the Plaintiff including Police Officers from Syokimau Police in the company of goons who forcefully evicted the 1st and 2nd Defendants' caretakers including workers from the suit land. He confirms that, they lodged a complaint with the OCS Syokimau Police Station as well as reported matter to the National Police Service. Further, that the National Police Service issued a final report dated the 21st February, 2024 which confirmed that the occupant of the suit land before Order was issued was Jadavji Govind Varsani, but not the Plaintiff. He avers that in the course of the investigations by the Internal Affairs Unit, the Plaintiff's agents admitted in their statements that the Plaintiff came into possession after the suit had been filed, and when they took possession in August, 2023, they found the property aLReady had a boundary wall, caretakers house and metal gate. Further, that the 2nd Defendant's caretaker and his family were the ones residing on the suit land before being



evicted by the Police. On the issue of contempt, he states that the 1st Defendant is deceased, while the 2nd Defendant is of advanced age and ailing.

6. The two applications were canvassed by way of written submissions.

Analysis and Determination

7. Upon consideration of the two instant Notice of Motion applications including the respective affidavits, annexures and rivalling submissions, the following are the issues for determination:
 - a. Whether the Applicant should be joined in these proceedings as a Defendant.
 - b. Whether the Status Quo Ante prior to orders issued on 13th March, 2023 should be restored.
 - c. Whether the Orders issued on 20th November, 2023 should be set aside.

8. As to whether the Applicant should be joined in these proceedings as a Defendant.

The Applicant has sought to be joined in these proceedings as a Defendant, which has been opposed by the Plaintiff, who insists that he had not furnished proof to demonstrate he is the son of the 1st and 2nd Defendants. The Applicant has explained that the 1st Defendant is deceased and that he is currently the joint owner of the suit land with the 2nd Defendant. On joinder of a party to any proceedings, Order 1 Rule 10 (2) of the *Civil Procedure Rules* stipulates *inter alia*: '(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.'

9. In *Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited & another* [2015] eKLR, the Learned Judge while dealing with joinder of parties to a suit held *inter alia*: 'I do not wish to determine the validity or otherwise of this arrangement between the 1st and 2nd Defendant because that is a matter for the trial; but one thing is clear from all these things: that the Plaintiffs and the intended Plaintiffs have an inextricable relief arising out of the subdivision and sale of the plots herein to them by the 2nd Defendant. Even if each of the Plaintiffs was to file a separate suit, a common issue of fact and law would emerge in relation to the subdivision and sale of the plots to each one of them. Similarly, the validity of the addendum to the mortgage herein between the Defendants is in the center of the cases by the Plaintiffs and the intended Plaintiffs. Therefore, despite the fact that the plots are numerous and perhaps of different sizes or that they were sold to different persons, they are all deduced from the suit property, and derived in the same transaction: they are based on the addendum between the Defendants, and all form part of the mortgaged property. Invariably, the determination of the real issues in controversy between the Plaintiff and the intended plaintiffs on the one hand, and the Defendants on the other hand, will need all concerned parties to be before the court. This course not only prevents duplication of efforts but also allows the court to determine the relief in the entire transaction and all common issues of fact and law which arise among the parties. Accordingly, to enable the court determine the real issues in dispute among all the parties, the intended Plaintiffs must be enjoined in the suit.'
10. In the current scenario, the Applicant claims that after the 1st Defendant's demise, he became the joint owner of the suit land together with the 2nd Defendant. The Applicant further confirms that the 2nd Defendant is of ill health. On perusal of the Certificate of Title for LR No. 12715/110, I note there was entry No. 4 dated the 25th May, 2021 indicating Transfer to Vipul Jadavji Govind Varsani 1/3



undivided share held from the trustees. Insofar as the Plaintiff has opposed joinder of the Applicant to these proceedings, however, in relying on the legal provisions cited above as well as associating myself with the quoted decision, I opine that the intended Defendant indeed meets the criteria for joinder as he owns 1/3 of LR No. 12715/110 which is in dispute herein. In my view, his involvement in these proceedings is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the dispute herein. Further, he will be affected by any decision from this suit. In the circumstances, I will proceed to join the Applicant as the 5th Defendant in this suit.

11. As to whether the *Status Quo Ante* prior to orders issued on 13th March, 2023 should be restored.

The Plaintiff claims they were on the suit land by the time the orders of status quo were issued on 13th March, 2023 which fact is disputed by the 1st and 2nd Defendants who insist they were the ones on the said land prior to issuance of the said orders. For the avoidance of doubt, I wish to reproduce the order issued on 13th March, 2023 by Justice Nyukuri: (1) ‘that the 1st and 2nd Respondents herein are granted 14 days to file and serve responses in relation to the application herein as parties are not opposed to grant of status quo orders. (2) That status quo obtaining in respect of LR No. 12715/14287 (Original 12715/110/3) be maintained pending hearing and determination of the application dated 21st February, 2023 so that no parties shall further develop or transfer suit property pending the determination of the said applicant.....’

12. On perusal of annexures ‘VJG V10’ which is a statement written by one Noor Hassan, on 20th February, 2024, he confirms that he found there was a perimeter wall on suit land and a caretaker including his wife who were employed by Vipul Jadavji residing thereon. Further, he confirmed that after Salat filed a case in court and obtained an order, the caretaker was removed from the land in Syokimau by police and he put in place Maasai Watchmen to guard the said land in August, 2023. Further, I note this matter had been subject to police investigation which also confirmed, that it is the 1st and 2nd Defendants that were on the suit land prior to their caretakers’ eviction. I note the Plaintiff claims a portion of LR 12715/110 which is all fenced and has not indicated if he is the one who fenced it. From the foregoing facts, which are not controverted by the Plaintiff, I find that the prevailing status quo prior to filing of this suit was that the 1st and 2nd Defendants’ were indeed on the suit land. In the circumstances, I direct that the status quo ante prior to issuance of the orders on 13th March, 2023 as well as eviction of the 1st and 2nd Defendants’ caretaker, in August, 2023, be restored but no party should dispose of the said suit land until this suit is determined.

13. As to whether the Orders issued on 20th November, 2023 should be set aside. I note the orders issued on 20th November, 2023 was in respect to the Plaintiff’s Notice of Motion dated the 25th April, 2023 where he sought to cite the 1st and 2nd Defendants’ for contempt. I wish to reproduce the excerpt of the said orders:

- a. The 1st and 2nd Defendants herein be and are hereby cited for contempt of Court Order issued on 13th March, 2023.
- b. That the 1st and 2nd Respondents be and are hereby denied audience completely till they purge the Contempt herein.
- c. That summons be and is hereby issued against the 1st and 2nd Defendants/Respondents to appear before court and show cause why they should not be committed to civil jail for a period of six (6) months for being in contempt and or disobedience of the orders issued on 13th March 2023.



- d. That the Officer Commanding Station, Syokimau Police Station, be and is hereby directed to enforce the status quo order issued on 13th March, 2023 by Lady Justice A. Nyukuri in ELC NO. E013 OF 2023 Salat Somo Ahmed Vs Jadavji Govind Varsani And Others.
- e. That costs of this application is awarded to the Plaintiff.
14. From my findings above, I note the Plaintiff's agent actually admitted that the 1st and 2nd Defendants' caretakers had been on the suit land prior to the issuance of the status quo order and it is the Plaintiff and the Police that evicted them, therefrom. It has emerged that the 1st Defendant died on 29th January, 2017 hence should not have been cited for contempt, in the first instance. The Court takes judicial notice of the fact that the 2nd Defendant appeared before it on 14th December, 2023 and was aged and unwell. From a perusal of the impugned Ruling, I note the application was undefended as the 1st and 2nd Defendants' advocate Mr. Isinta, who was on record, failed to file a reply. Based on the facts before this court, and in the interest of justice, I will proceed to set aside the orders issued on 20th November, 2023.
15. It is against the foregoing that I find the two Notice of Motion applications merited and will allow them in the following terms:
- i. That Vipul Govind Varsani be and is hereby joined as the 5th Defendant in this suit and the Plaintiff granted leave of fourteen (14) days to file and serve his Amended Plaint.
 - ii. Upon service, the Defendants are granted leave of fourteen (14) days to file and serve their respective amended Defences if need be.
 - iii. The status quo ante prior to issuance of the orders on 13th March, 2023 as well as eviction of the 1st and 2nd Defendants' caretaker in August, 2023 be restored and OCS Syokimau Police Station to provide security.
 - iv. The orders issued on 20th November, 2023 be and are hereby set aside.
 - v. Costs of the two applications will be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 19TH DAY OF JUNE, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of:

Ms. Nyambura holding brief for Kabata for Plaintiff

Ochwo for Applicant, 1st and 2nd defendants

Allan Kamau for 3rd and 4th defendants

Court assistant – Simon

