



REPUBLIC OF KENYA



Njenga v Wanjiku; Umaga Wiyonere Company Limited (Third party) (Environment & Land Case 1162 of 2014) [2024] KEELC 4832 (KLR) (13 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4832 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1162 OF 2014**

**JA MOGENI, J
JUNE 13, 2024**

BETWEEN

JOHN FORO NJENGA PLAINTIFF

AND

FRANCIS KAMANDE WANJIKU DEFENDANT

AND

UMAGA WIYONERE COMPANY LIMITED THIRD PARTY

RULING

1. Before me for determination is the Plaintiff's Application dated 26/04/2024 filed pursuant to Article 50 and 159 of the *Constitution* of Kenya, 2010, Section 1A, 1B, 3 & 3A of the *Civil Procedure Act*, Order 51 of the *Civil Procedure Rules of 2010* Laws of Kenya and all other enabling provisions of the law. The Plaintiff/Applicant is seeking for the following Orders:
 1. That the Honourable Court do issue witness summons to the Director of Umagara Wiyonere Company limited to appear in Court during the hearing and produce before the Honourable Court documents including the records of all allottees in land parcel LR No. 8469/4, Kasarani and LR No. 8469/9 Kasarani, Land mutation forms of plots/subdivision of LR No. 8469/4 and LR No. 8469/9 Kasarani and Original survey Map of LR No. 8469/4, Kasarani and LR No. 8469/9 Kasarani.
 2. Costs of this application to be in the cause.
2. The Application is premised on the grounds cited at the foot of the Application and it is further grounded on the Supporting Affidavit of John Foro Njenga, the Plaintiff/Applicant herein, sworn on 26/04/2024. I do not need to reproduce the same.



3. The Application is not opposed. The Court granted the Defendant 14 days to file their response. As at 20/05/2024, the Defendant/Respondent had not filed any response to the Application.
4. The Court on 30/04/2024 gave directions that the Application be canvassed by way of written submissions and a Ruling date was scheduled. By the time of writing this Ruling, none of the parties had duly submitted.
5. Having considered the instant Application, the only issue arising for determination before this court is whether the Application dated 26/04/2024 is merited.
6. It is the Plaintiff's case that it is clear from the facts by the defendant that he and the Defendant have different plot numbers but both appear to be on the same location and/or in the same area. Both the Plaintiff and the Defendant claim to have acquired the suit property from the third party. He deponed that there is need to have the current director or its agents appear before this Court to assist the Court solve this dispute. That it is in the interest of justice that the third party's director is summoned to court with the records of the suit property, the maps of suit property and mutation forms, for this Honourable Court to make a determination.
7. I note that the Plaintiff has brought this application pursuant to the provisions of Section 3A of the *Civil Procedure Act* among other provisions of the law. It follows that the Court is called upon to exercise its inherent jurisdiction and exercises its discretionary mandate.
8. It is common ground that where a court is called upon to exercise discretion and its inherent powers, the same must be exercised judiciously and in the interest of justice. This was as aptly expressed by the Court of Appeal in *Patriotic Guards Ltd v James Kipchirchir Sambu*, Nairobi CA No. 20 of 2016, [2018] eKLR as follows: -

“It is settled law that whenever a court is called upon to exercise its discretion, it must do so judiciously and not on caprice, whim, likes or dislikes. Judicious because the discretion to be exercised is judicial power derived from the law and as opposed to a judge's private affection or will. Being so, it must be exercised upon certain legal principles and according to the circumstances of each case and the paramount need by court to do real and substantial justice to the parties in a suit.”
9. The matter was coming up for hearing evidence of a surveyor on 30/04/2024. However, the plaintiff's counsel, Mr. Ng'ang'a informed the court that he wished to withdraw that evidence. Mr. Ng'ang'a added that he filed an application for summons to issue for the third-party to come and produce the records. The Defendant's counsel only requested for time to put in a response to the present application. I also note that the Court did give an order on 30/04/2024 that summons to issue and to be extracted by the plaintiff and served upon the 3rd party to attend court and produce the records. The same has not been set aside and/or vacated.
10. In view of the totality of the circumstances of this case, and guided by the dictates of Article 50 and 159 of the *Constitution*, and noting that the overriding objective of the Court is to deliver substantive justice to the parties upon giving them a fair hearing, I shall allow the application by the Plaintiff to issue summons to call have the current director or its agents appear before this Court to produce the records of the suit property, the maps of suit property and mutation forms for this Honourable Court to make a determination.
11. For those reasons, this Court finds that the Application dated 26/04/2024 is merited and is hereby allowed in the following terms: -



- a. Witness summons do hereby issue to the director of the Third Party herein for purposes of producing documents including the records of all allottees in land parcel LR No. 8469/4, Kasarani and LR No.8469/9 Kasarani, Land mutation forms of plots/subdivision of LR No.8469/4 and LR No.8469/9 Kasarani and original survey Map of LR No. 8469/4, Kasarani and LR No.8469/9 Kasarani.
- b. Costs of the Application to be in the cause.

12. Orders Accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF JUNE, 2024.

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MOGENI J

JUDGE

In the virtual presence of: -

Mr. Ng'ang'a holding brief for Mrs Ngugi for Defendant

No appearance for Plaintiff and Third party

C. Sagina - Court Assistant

