



**Mukunzu v Nthenge & 5 others (Environment & Land Case E095 of 2021) [2024] KEELC 5493 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5493 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E095 OF 2021**

**A NYUKURI, J  
JULY 24, 2024**

**BETWEEN**

**EMMA NZULA MUKUNZU ..... PLAINTIFF**

**AND**

**JANE KALEKYE NTHENGE ..... 1<sup>ST</sup> DEFENDANT**

**MARIETA MUSAU ..... 2<sup>ND</sup> DEFENDANT**

**JOYCE MUTINDA ..... 3<sup>RD</sup> DEFENDANT**

**DAVID KYALO NDAMBUKI ..... 4<sup>TH</sup> DEFENDANT**

**BENCLIFF MUTHIANI ALIAS MUTHIANI NGALI ..... 5<sup>TH</sup> DEFENDANT**

**THOMAS CHANGAMU ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. On 4<sup>th</sup> December 2023, when this matter came up for pre-trial directions, counsel for the 6<sup>th</sup> defendant informed this court that the instant matter was related to other matters, being Nos. 215 of 2015 and 216 of 2015; an averment that was confirmed by counsel for the plaintiff. The court then directed the parties to file submissions as to why the same parties have three matters on the same subject matter and address the court on whether suit Nos. 216 of 2015 and 95 of 2021 amount to abuse of the court process due to existence of No.215 of 2015. Counsel for the plaintiff filed submissions on 28<sup>th</sup> January 2024 while the defence did not file any submissions.

**Submissions by the plaintiff**

2. Counsel argued that the instant suit should not be struck out on two grounds. The first ground was that the titles in the suits were different as the instant suit concerned property known as Mavoko Town Block 3/89465 registered in the name of the plaintiff, whereas in ELC No. 215 of 2015, the suit



property is title No. Mavoko Town Block 3/3180 (lukenya Parcel Number 3180). It was argued for the plaintiff that as the registered owner of the said suit land, the plaintiff had indefeasible rights over the suit property by dint of Section 24 (a) of the [Land Registration Act](#).

3. It was also submitted that the plaintiff in the instant suit is claiming through inheritance and the other parties are claiming as purchasers. It was argued that the plaintiff inherited the land from one George Mukunzu Ndili (deceased), pursuant to the original title issued on 28<sup>th</sup> January 2021 after cancellation of the title which was fraudulently obtained. On the other hand, it was argued that the plaintiff in No. 215 of 2015 claims to have entered into a sale agreement with the 1<sup>st</sup> defendant wherein he paid the full purchase price.
4. On whether the plaintiff ought to have counterclaimed in Machakos ELC No. 215 of 2015, it was submitted that a counterclaim could not suffice, since the suit properties are different and the interests of the plaintiffs are different. They concluded by submitting that the suit should not be struck out, placing reliance on Order 2 Rule 15 (1) of the [Civil Procedure Rules](#), 2010 and the case of [Blue Shield Insurance Company Ltd vs Joseph Mboya Oguttu \[2009\]](#) eKLR.

### **Analysis and Determination**

5. Rule 28 paragraphs (e) and (l) of the Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in other Courts (Legal Notice No. 5178) provide that at the pretrial, this court has power to issue an Order that the parties agree and narrow down issues for trial and the court has the discretion to give any further orders and/or directions as the ends of justice may require.
6. Having considered the plaintiff's submissions and the pleadings in Nos. 215 of 2015 and 216 of 2015, it is clear that the three suits have parcels of land with different registrations numbers although they are related titles having been created pursuant to succession proceedings. In addition, some claimants claim to be purchasers while others claim ownership on the basis of inheritance. Therefore, as the issues raised are intertwined, it will serve the best interests of justice if the matters herein are heard alongside each other. Hence to meet the interests of justice and the efficient use the scarce judicial time, I order that Machakos ELC No. 215 of 2015, Machakos ELC No. 216 of 2015 and Machakos ELC No. E095 of 2021 shall be heard alongside each other.
7. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 24<sup>th</sup> DAY OF JULY 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the Presence of;

Ms. Tum holding brief for Ms. Muthoki for plaintiff

Mr. Akhaabi for 6<sup>th</sup> defendant

No appearance for other defendants

Court assistant – Josephine

