



**Mwaniki v Khandid (Environment & Land Case E011 of 2024)
[2024] KEELC 5669 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5669 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E011 OF 2024**

**LN MBUGUA, J
JULY 15, 2024**

BETWEEN

ANNE GATHIGIA MWANIKI PLAINTIFF

AND

SULEYMAN MOHAMED KHANDID DEFENDANT

RULING

1. This suit was filed via a plaint dated 15.1.2024 where plaintiff avers that he owns parcel LR 1540077, whereby defendant without justification took over the land in January 2021 – October 2023 and constructed a building thereon.
2. The plaintiff also filed an application dated 15.1.2024. Seeking orders inter alia that rent payable by the tenants in occupation of the suit property be deposited in court.
3. On 7.5.2024 the court issued orders that:
 - i. A survey be done by the regional surveyor and both parties to avail their respective documents during the survey exercise. A report to that effect was to be filed, and parties were to share costs of the survey.
 - ii. The plaintiff was to serve summons to enter appearance by 7.6.2024 and the defence was to be filed accordingly.
 - iii. The matter was to be mentioned on 2.7.2024.
4. On 2.7.2024, counsel for the plaintiff informed the court that survey was not done as defendant never availed himself, and that no defence was ever filed, yet summons to enter appearance were served. The court was urged to give interim orders on rent payment as defendant was just dragging his feet.



5. In rejoinder, defence counsel averred that

“we are trying to get hold of him, (our client) we pray for 30 days and that no interim orders should be given.”

6. At this stage, I find that no plausible reasons have been advanced by defence as to why the defendant did not comply with the court orders relating to survey of the land. Still no plausible explanation has been given as to why a defence has not been filed as per the law.

7. In that regard, the court gives the following orders:

1. Prayer 4 in the application dated 15.1.2024 is allowed until further directions are given by the court. The tenants are to pay the rent in court with effect from 1.8.2024.
2. The defence is granted up to 28.7.2024 to file a defence failure to which, the matter shall proceed as an undefended claim.
3. The exercise on survey is to be conducted within 60 days (by 15.9.2024).
4. Parties are to file and serve their paginated trial bundles containing their pleadings, witness statements and documentary evidence by 15.9.2024. Any Documents and or witness statements filed outside the given timelines shall stand as expunged.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Chege for Plaintiff

Mr. Bwanadi for defendants

Court assistant: Eddel

