



REPUBLIC OF KENYA



**Ali v Dika & 2 others (Environment & Land Case 002 of 2022)
[2024] KEELC 6437 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6437 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE 002 OF 2022
PM NJOROGE, J
SEPTEMBER 30, 2024**

BETWEEN

FATUMA MOHAMMED ALI PLAINTIFF

AND

BORU DIKA 1ST DEFENDANT

HENRY KIMATHI 2ND DEFENDANT

ADAM GITONGA NYAGAH 3RD DEFENDANT

RULING

1. This ruling concerns an application dated 22/5/2024. The application seeks the following orders;
 1. This Application be certified urgent and be heard without delay as the main suit is scheduled for further hearing on 27th May, 2024. (Sic)
 2. This Honourable Court be pleased to review and set aside the orders of 4th December, 2023 as there is an error on the face of the record and there are sufficient reasons, to review the said orders to meet the ends of Justice.
 3. This Honourable Court do make such further or better orders as will meet the ends of justice.
 4. Costs of this application be in the cause.
2. The application is supported by the affidavit of Adam Gitonganyaga, the 3rd Defendant sworn on 22nd May, 2024 and has the following grounds;
 1. The Applicant represents the estate of his deceased father the 3rd defendant herein.
 2. The Applicant obtained the letters of Administration to his 3rd Defendant's Estate on 8th day of July, 2019.



3. On the 14th day of October, 2019 this Honourable Court granted unlimited leave to the applicant to file further statements and documents.
 4. Such statements and documents were filed on 23/1/2020, 2/11/2021 and 3/11/2021.
 5. When the matter came up for hearing on the 24th of April, 2023 the Applicant testified and adopted his statement dated 2/11/2021.
 6. Counsel for the Respondent objected to the production of the documents filed contemporaneously with the Applicants statement except the grant.
 7. Clearly the Respondents are approbating and reprobating at the same time by seeking to concede to the production of the grant to keep this case alive but objecting to the other relevant documents while clearly attacks (sic) their case.
 8. This Honourable Court has unfettered discretion to allow the Applicant to produce the documents already filed to meet the ends of Justice and to stop the Respondents from fraudulently, “stealing” the 3rd Defendant’s estate prime property in Isiolo Town.
 9. It is only mite (sic) that this application be allowed.
3. Before directions could be issued, Advocate Nathan Ndung’u who was holding brief for Advocate Kaburu informed the court that the 3rd Defendants’ evidence was slated to be heard on 30/9/2024. He said that by filing the application only days before the scheduled hearing date, the intention of the 3rd defendant was meant to delay the hearing and determination of the suit.
He told the court that an application similar to this one had been dismissed. He asked the court to allow the oral hearing of the application so that the hearing slated for 30/9/2024 could proceed.
 4. Advocate Brian Mwenda told the court that similar applications had been dismissed twice.
He asked the court to allow the application to be heard orally and to vacate the orders issued on 16/9/2024 so that the long-awaited hearing of the 3rd Defendant’s evidence could proceed.
 5. At this juncture, the court vacated its orders for directions issued on 16/9/2024 and directed that the application be heard orally in court.
 6. Miss Kerubo for the applicant told the court that she was wholly relying on the Applicant’s Supporting Affidavit dated 12/9/2024 and urged the court to set aside its orders issued on 1/7/2024 and to reinstate the Applicant’s application dated 22nd May, 2024 for hearing.
 7. Advocates Nathan Ndung’u for the plaintiff and Brian Mwenda for the 2nd defendant relied on their earlier oral statements but both reiterated that two similar applications had already be dismissed by the court.
 8. Advocate Nathan Ndung’u opined that by filing this application only days before the hearing of the 3rd Defendants evidence, the intention was to further delay full hearing and determination of this suit.
 9. Advocate Brian Mwenda told the court that all the other parties except the 3rd defendant had concluded their evidence at Meru in 2022, almost 3 years ago. He asked the court not to allow further delay in the full hearing and determination of this suit.
 10. I have considered the pleadings in the application and the oral submissions made by the parties. I find as a fact that two similar applications had been dismissed by this court. I also find that by the applicant filing this application only days before the scheduled hearing of the 3rd Defendants’ evidence, the



intention is to delay full hearing and determination of this suit. I also unequivocally state that the Applicant has not satisfied me that earlier rulings in this matter should be set aside.

11. The following orders are hereby issued;

1. The application is hereby dismissed.
2. Hearing of the 3rd Defendants' evidence will proceed on 30/9/2024.
3. Costs shall follow the event and are awarded to the plaintiff and to the 2nd Defendant.

DELIVERED IN OPEN COURT AT ISIOLO THIS 30TH DAY OF SEPTEMBER, 2024 IN THE PRESENCE OF:

Court Assistant: Balozi/Rahma

HON. JUSTICE P.M NJOROGE

JUDGE

