



Dynamic Sisters Enterprises Limited v Amboseli Court Limited & 11 others (Environment & Land Case E243 of 2020) [2024] KEELC 6756 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6756 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E243 OF 2020
MD MWANGI, J
SEPTEMBER 26, 2024**

BETWEEN

DYNAMIC SISTERS ENTERPRISES LIMITED PLAINTIFF

AND

AMBOSELI COURT LIMITED 1ST DEFENDANT

KIAMBU DANDORA FARMERS COMPANY LIMITED 2ND DEFENDANT

ABDILLAH MUIGAI MUIRURI 3RD DEFENDANT

JOSEPH MWANGI KARANJA 4TH DEFENDANT

JOSEPH NDUATI 5TH DEFENDANT

ERIC OTIENO HESBON 6TH DEFENDANT

BASHIR ALI IBRAHIM 7TH DEFENDANT

WILLY KARUNDA MWANGI 8TH DEFENDANT

INSPECTOR GENERAL OF POLICE 9TH DEFENDANT

CHIEF LAND REGISTRAR 10TH DEFENDANT

NATIONAL LAND COMMISSION 11TH DEFENDANT

HON. ATTORNEY GENERAL 12TH DEFENDANT

RULING

(On re-opening of the case and application of section 22(b) of the *Civil Procedure Act* by the Court *suo moto*)



Background

1. The Plaintiff claims parcels of land known as Title Numbers 15400/376,15400/379, 15400/380, 15400/383, 15400/384 and 15400/387 allegedly bought from the 1st Defendant in this matter. The 2nd Defendant on the other hand claims to be the registered proprietor of the suit properties measuring 818 acres pursuant to a Certificate of Title No. 11379/3 issued on April 8, 1970. It asserts that it purchased the land from its previous owner and a transfer duly signed. The 2nd Defendant denied selling any part of the said land to the 1st Defendant herein. Consequently, the 2nd Defendant challenges the validity of the Plaintiff's title. The 2nd Defendant called the Nairobi Regional Surveyor who literally threw spanners into the works. She claimed that the original parcel L.R No. 11379/3 owned by the 2nd Defendant has never been subdivided.
2. To enable the court, deliver on its mandate of doing justice to all and in order to decide on the dispute with finality, it is necessary that the court be appraised on the current status of the titles claimed by the Plaintiff and that claimed by the 2nd Defendant. The court considers its absolutely necessary to establish the status of the titles before rendering a final judgment in this matter.
3. Accordingly, and for purposes establishing the status of the titles as aforesaid, the court will need to interrogate the Director in charge of Land Administration and the Chief Land Registrar to clarify on the issue, on a date to be set by the court.

Legal Basis of the Court's Decision.

4. As this court stated in the case of *Jeremy Mark Block vs The Kenya Forest Service & Others* (ELC Pet. 1396 of 2014), the law allows the court to, on its own motion and at any stage of the proceedings to call a witness. However, this is a discretion that must only be invoked where it is absolutely necessary for the just determination of the case and with great caution. It is also appropriate that the parties in the case be given a right to cross-examine the witness called by the court in this manner.
5. Section 22(b) of the *Civil Procedure Act* empowers the court at any time, either on its own motion or on the application of any party to,

“..... either on its own motion or on an application by any party to issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid.”
6. The *Evidence Act* at section 173 too empowers a Judge or a Magistrate, in order to obtain proper evidence, to ask any question, in any form, at any time, of any witness, or of the parties about any fact and to order the production of any document or thing.
7. I consider this case one such exceptional case that calls for the exercise of the court's discretion for purposes of the just and conclusive determination of the dispute between the parties.
8. The court therefore vacates its earlier order on delivery of a judgment and re-opens the case to enable the Director in Charge of Land Administration and the Chief Land Registrar in Nairobi appear as witnesses before the court to appraise the court of the status of Title Numbers 15400/376,15400/379, 15400/380, 15400/383, 15400/384 and 15400/387 as well as Title No. 11379/3.
9. The court will issue appropriate witness summons to the Director in Charge of Land Administration and the Chief Land Registrar to testify before the court and produce the respective Correspondence and Deed/Parcel files on an appropriate date.



It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER 2024

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Muluvi h/b for Mr. Mutua S.C for the Plaintiff.

Mr. Were for the 2nd to 8th Defendants

N/A for the 1st, 9th – 12th Defendants

Court Assistant – Yvette.

