



**Ethics Anti-Corruption Commission v Shariff Ali Shekue & 4
others (Environment & Land Case 223 of 2012 & 103 of 2013
(Consolidated)) [2024] KEELC 6147 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6147 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 223 OF 2012 & 103 OF 2013 (CONSOLIDATED)
NA MATHEKA, J
SEPTEMBER 25, 2024**

BETWEEN

ETHICS ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

SHARIFF ALI SHEKUE 1ST DEFENDANT

AMARNATH GUPTA T/A AMANATH ENTERPRISES 2ND DEFENDANT

ZIFRA INVESTMENT LIMITED 3RD DEFENDANT

OFFICE OF THE GOVERNOR 4TH DEFENDANT

MOMBASA COUNTY GOVERNMENT 5TH DEFENDANT

RULING

1. The application is dated 1st December 2023 and is brought under Sections 1A, 1B and 63(e) *Civil Procedure Act* and Order 51 Civil Procedure Rules seeking the following orders;
 1. That this application be certified as urgent and service thereof be dispensed with in the first instance.
 2. That there be a temporary stay of further proceedings herein pending the hearing and determination of this application.
 3. That the 3rd Defendant's title to the suit land be cancelled.
 4. That the costs of this application be provided for.
2. It is based on the annexed affidavit, of Gorave Amar Nath and on the grounds that in order for the Court to achieve its objective of conducting just and expeditious proceedings herein it is imperative



that this application be heard and determined. That the 3rd Defendant herein is a party to this suit on the sole basis of a Title that was obtained in flagrant contravention and breach of a Court Order, and which Title is therefore fraudulent, illegal null and void ab initio. That there is need to streamline the proceedings and issues herein for an expeditious and just resolution thereof. That the other parties herein stand to suffer no prejudice if the Orders sought herein are granted. That it is fair and just in the interests of justice that the Orders sought herein be granted.

3. The Plaintiff/Respondent stated that the 2nd Defendant/Applicants Application is brought at the hearing stage with intention to derail the dispensation of the consolidated suits herein. That the subject matter of the two matters herein namely ELC 223 of 2012 and ELC 103 of 2013 is the same, and relates to the validity of the Title to land registered as Mombasa/Block XVIII/556. The two cases have been consolidated for determination, with the lead file being ELC 223 of 2012. That this Honourable Court consolidated the suits herein so as to determine the issues raised in each pleading with the lead file being ELC 223 OF 2012 which suit challenges the initial allocation of the suit property to 1st Defendant and the issue raised in this Application on cancellation of the 3rd Defendant Title to the suit property can be canvassed well by way of viva voce evidence during the hearing.
4. That it is indeed true that the title to the land subject matter of these proceedings held by the 3rd defendant was obtained during the pendency of an order of injunction, and therefore in contravention of orders issued by this Honourable Court. However, the matter of cancellation of the title is not legally feasible in an interlocutory application and should properly await to be canvassed during the full trial upon adduction of viva voce evidence.
5. This court has considered the application and the submissions therein. The applicant seeks for orders of cancellation of the said title as it was in contravention of the court orders. I find that it is not disputed that the title to the land subject matter of these proceedings held by the 3rd defendant was obtained during the pendency of an order of injunction, be that as it may, I concur with the respondent that the issue raised in this Application on cancellation of the 3rd Defendant Title to the suit property can be canvassed well by way of viva voce evidence during the hearing. It would be premature for this court to give final orders during this interlocutory stage. I find that this application is not merited and is dismissed. Parties are advised to set this suit for hearing. Costs of this application to be in the cause.
6. It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF SEPTEMBER 2024.

N.A. MATHEKA

JUDGE

