



Kivure (Suing on behalf of 4201 members of Kishamba B Group Ranch) & 7 others v Attorney General & 6 others; Mwakesi & 12 others (Interested Parties) (Land Case 4 of 2024) [2024] KEELC 5935 (KLR) (Environment and Land) (19 September 2024) (Ruling)

Neutral citation: [2024] KEELC 5935 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
LAND CASE 4 OF 2024
EK WABWOTO, J
SEPTEMBER 19, 2024

BETWEEN

JOHN KIVURE (SUING ON BEHALF OF 4201 MEMBERS OF KISHAMBA B GROUP RANCH) & 7 OTHERS & 7 OTHERS PLAINTIFF

AND

ATTORNEY GENERAL 1ST DEFENDANT

BENSON MLAMBO MWAKINA & 5 OTHERS & 5 OTHERS . 2ND DEFENDANT

AND

SHADRACK MWAKESI INTERESTED PARTY

SAIDI HEKUTA INTERESTED PARTY

JUMA MNYAO INTERESTED PARTY

WARAO CHANCHALO GUYO INTERESTED PARTY

RAPHAEL KIMBIO BARISA INTERESTED PARTY

EVANS MWAWASI MWAGHARO INTERESTED PARTY

JOSEPH MWAIWO INTERESTED PARTY

RICHARD SHIKA NZINGANI INTERESTED PARTY

GEORGE SOGHE INTERESTED PARTY

JUMA FUNDI MOHAMED ALIAS MWAMBOGHA INTERESTED PARTY

DAFTON FAMBA KIRIGA INTERESTED PARTY

EDWIN MAINA WANGECI INTERESTED PARTY



RULING

1. The Applicants moved the Court vide a Notice of Motion Application dated 11th July 2024, accompanied by a supporting affidavit sworn by Shadrack Mwakesi seeking orders for review and setting aside of orders issued on 17th May 2024 with costs.
2. The application was premised on the main grounds that the Applicants are members of Kishamba B Group Ranch as well as owners of interest to the immovable property known as Sagalla/Kishamba B/1 who then sought interlocutory relief from orders granted in 17th May 2024, to mitigate further degradation of their properties that may arise out of status quo orders that had also been obtained by the same party in a corresponding suit ELCLC/5/2024 on 19th October 2022.
3. It was submitted that the aforementioned orders had originally been granted on 29th July 2022 and consequently been extended on 17th May 2024, without notice to the Applicants.
4. The said orders in question were issued restraining all manners of activities including construction works, demarcation, survey, leasing, charging and any other activity on the suit property pending hearing and determination of the suit as well as issuing of an inhibition under Section 68 and 69 of the Land Registration Act and Land Registration (Regulations) 2017 to be registered at the 1st Defendants costs on the suit property.
5. Having dispensed with the prayer for joinder of parties, I have considered the sole issue for determination is whether this Court should review, vary and/or set aside the orders issued by this Court on 17th May 2024.
6. In the Applicants' supporting affidavit dated 11th July 2024, it was argued that the orders for status quo were granted prior to the Applicants being joined to the suit and as such only became aware of the orders when they sought connection of power, water and planning approval. For this reason, it was argued that the 1st Defendant have no legal basis in curtailing individual ownership
7. In the Plaintiffs' Replying Affidavit dated 29th July 2024, sworn by John Shingira Mwawasi, it was argued that there was no apparent mistake or sufficient reason to grant the orders sought. It was argued that the 1st-13th Interested parties supported the 1st Defendants position in the suit and counterclaim at all material times. It was further argued that the 14th- 24th Interested parties were deemed to have been represented by the Plaintiffs when the initial orders were granted on 29th July 2022 and therefore all parties were present. Furthermore, when the orders were extended, this was done in the presence of all parties and therefore the application was merely a late attempt at obstruction of justice.
8. The Court is guided by Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules, which lay out review in circumstances where there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
9. With regards to determining the merits of the Notice of Motion application, this Court must exercise its discretion to ensure the principles of fairness and right to fair hearing to all is a reality for all parties.



Discretion is well discussed in *Patriotic Guards Ltd v. James Kipchirchir Sambu* [2018]eKLR, where the court stated:

“It is settled law that whenever a court is called upon to exercise its discretion, it must do so judiciously and not on caprice, whim, likes or dislikes. Judicious because the discretion to be exercised is judicial power derived from the law and as opposed to a judge’s private affection or will. Being so, it must be exercised upon certain legal principles and according to the circumstances of each case and the paramount need by court to do real and substantial justice to the parties in a suit.”

10. As is now normative practise, status quo orders are issued with the over-arching effect of preservation of the suit property. In this instance, it is a point of convergence that the suit property is community land and will effectively be disposed of under the legislative instruction outlined within the [Community Land Act](#).

11. Section 3 of the [Community Land Act](#) outlines the guiding principles in the following terms:

“In the performance of the functions and exercise of powers under this Act, every person dealing with community land shall be guided by the following principles— (a) the principles of land policy set out in Article 60 of [the Constitution](#); and (b) the national values and principles of governance set out in Article 10 of [the Constitution](#).”

12. Whereas Article 60 of [the Constitution](#) outlines the national principles for land policy development and management, Article 10 sets the national values and principles of governance to include — (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; (c) good governance, integrity, transparency and accountability; and (d) sustainable development.

13. In consideration of the above, this Court finds that the orders re-issued on 17th May 2024 were made judiciously and the Applicants have not presented any new evidence in support of their application. No sufficient reasons have been tendered before this court to review and or vary the status quo orders issued.

14. In the foregoing, this Court hereby issues the following orders:

- i. The prayer (No. 3) to review, vary and/or set aside orders of 17th May 2024 within the Notice of Motion Application dated 11th July 2024 is unmerited and therefore declined.
- ii. Each party shall bear own costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2024.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Litoro for the Plaintiffs

N/A for the Defendants.



Mr. Cheboin for County Government of Taita Taveta.

N/A for the other parties.

Court Assistant; Mary Ngoira and Norah Chao.

