



**Kide & another v Sawe & 3 others (Environment & Land Case E007 of 2024) [2024] KEELC 6048 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6048 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE E007 OF 2024  
FO NYAGAKA, J  
SEPTEMBER 18, 2024**

**BETWEEN**

**PHILIP PKOPUS KIDE ..... 1<sup>ST</sup> PLAINTIFF**

**PAUL KIDE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SIMON KIPSANG SAWE ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER TRANS-NZOIA ..... 2<sup>ND</sup> DEFENDANT**

**DIRECTOR LAND ADJUDICATION AND SETTLEMENT .... 3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The instant application was filed after the court had issued orders of maintenance of status quo on 04/40/2024, and on 21/05/2024, over land parcel No. Chepchoina Settlement Scheme Phase 11 plot No. 576. The brief background to the issuance of the said orders is that on 21/2/2024 the Plaintiff filed the instant suit and simultaneously brought an application dated 20/2/2024. In the said application he sought an order of injunction against the Defendants over the use and occupation of the suit land pending the hearing and determination of the suit.
2. The court having carefully considered the application and the response thereof decided, in its wisdom, to call for independent information regarding the occupation and use of the suit land at the time of suit. It thus summoned the Area Chief of the location where the land was situate. The Chief attend court and faithfully gave information as to the ground status of the suit land. He informed the court that as at the time of filing suit the 1<sup>st</sup> defendant was the one in occupation of the suit land. The court



therefore proceeded to issue an order of status quo based on the information, pending the hearing and determination of the suit.

3. Hot on the heels of the issuance of the orders of status quo was the instant application. The court called on the Area Chief to attend court and explained why he misled the court. The reason was that the Applicant, in the instant application, being the Plaintiffs moved this court vide the instant application to say the execution of the orders issued on 21/5/2024 pending the determination of the application, and to review and set aside the said orders and instead order the status quo to be in favour of the Plaintiffs as being in occupation of the suit land. This puzzled the court.
4. The Area Chief swore an affidavit in response to the allegations against him. The allegations were that the 2<sup>nd</sup> plaintiff was in occupation of the land and had been ploughing the same since 2012 when he bought the land from the 1<sup>st</sup> plaintiff and was the initial allottee. He blamed the Area Chief of fabricating the testimony as to the occupation status. He stated that the officer never visited the land and did not therefore give a true account of the position. These and other facts were deposed to the supporting affidavit.
5. The Area Chief swore on 20/08/2024, that he visited the land on 05/04/2024 and interviewed, among others two elders of “nyumba kumi”. They informed him that indeed the Applicant had been in uninterrupted occupation of the suit land until 2022 when, following a mutual agreement, the land was leased to a person who was the lessee of the Applicant’s wife. Then in 2024 the Applicant’s wife, during the planting season, forcefully re-entered the land, intending to plant, but she was repulsed and the Respondent retained occupation. The matter was reported to the police. That being the case, the court proceeded to determine the application.
6. Order 45 Rule 1 of the Civil Procedure Rules provides for the conditions under which a court may review its order or judgment, if the same has been appealed against. The provision is a detailed expression of the substantive provision, Section 80 of the *Civil Procedure Act*. Both provisions envisage a review where there is discovery of a new evidence or evidence which, with due diligence, was not within the knowledge of the Applicant, at the time when the decree or order was passed, or, of relevance, “sufficient reason”.
7. This court has on more than one occasion stated that sufficient reason has to be analogous to the reasons that the review would be permitted, that is to say, discovery of new or important evidence as stated above, or mistake or apparent on the record.
8. In the instant case the Applicant argues that the act of the wife attempting to re-enter the land and being repulsed means that she re-took possession and therefore reverted the status quo as it was before leasing the land. The Area Chief has confirmed that the 2<sup>nd</sup> Plaintiff or his wife never re-entered the land before the suit was filed. I therefore respectively disagree with the Applicant that the status quo was different from what the area Chief gave on 21/05/2024 and in his affidavit sworn on 20/08/2024. There is neither new evidence over the matter nor any mistake apparent on the fact of the record.
9. Further, there is no sufficient reason to warrant review of the orders issued earlier herein regarding the status quo. I thus summarily dismiss the application dated 10/06/2024 with costs to the Respondents. I further hold that the Area Chief never committed perjury as prayed by the Applicant.
10. The above being the finding of this court, the court directs that the Defendants, having 14 days to file their defences and serve. The Plaintiff shall have 14 days to reply if need be. After close of pleadings, parties shall move further. After that each party has 5 days to file and exchange their trial bundles.



11. This matter shall be heard fully i.e. all witnesses of both the Plaintiffs and defence, on 07/11/2024. The Area Chief is hereby discharged from further attendance of court unless otherwise summoned again.
12. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT KITALE THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**HON. DR. IUR F. NYAGAKA**

**JUDG, ELC KITALE**

In the presence of:

Karani Advocate -----for the Plaintiffs/Applicants

Kavuili advocate-----for 2<sup>nd</sup> - 4<sup>th</sup> Defendants

Kisembe Advocate -----for the 1<sup>st</sup> Defendant

