



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Tindika v Mwacharo & 11 others (Civil Suit 24 of 2023)  
[2024] KEELC 7153 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7153 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
CIVIL SUIT 24 OF 2023  
AE DENA, J  
OCTOBER 22, 2024**

**BETWEEN**

**RANDOLPH M TINDIKA ..... PLAINTIFF**

**AND**

**KHADIJA SALIM MWACHARO ..... 1<sup>ST</sup> DEFENDANT**

**MOMO HASSAN JUMA ..... 2<sup>ND</sup> DEFENDANT**

**ASINA MOHAMED HAMISI ..... 3<sup>RD</sup> DEFENDANT**

**MWANAMKASI MWINYI KOMBO ..... 4<sup>TH</sup> DEFENDANT**

**MWALIMU MWINYI KOMBO ..... 5<sup>TH</sup> DEFENDANT**

**IMA MOHAMED ..... 6<sup>TH</sup> DEFENDANT**

**ASINA ALI ABUBAKAR ..... 7<sup>TH</sup> DEFENDANT**

**RAMADHAN SALIM ..... 8<sup>TH</sup> DEFENDANT**

**MARIAM SAMUEL NDORO ..... 9<sup>TH</sup> DEFENDANT**

**INSPECTOR GENERAL OF POLICE ..... 10<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 11<sup>TH</sup> DEFENDANT**

**COUNTY/DISTRICT REGISTRAR KWALE ..... 12<sup>TH</sup> DEFENDANT**

**RULING**

**The Application**

1. The Notice of Motion instituting this application was amended on 18/4/2023. It seeks the following orders before this court; -



1. Spent
  2. That this Honourable court be pleased to issue a temporary order of injunction restraining the 1<sup>st</sup> to 9<sup>th</sup> Defendants by themselves, their successors, personal representatives, agents, assigns and/or employees or anyone claiming in or through them or otherwise howsoever from selling or purporting to sell or offer to sell or offering to sell, disposing off, entering into, remaining, charging, mortgaging, subdividing, pledging or in any manner whatsoever interfering with ALL THAT piece or parcel of land known as title number Kwale/Ngombeni/1104 pending the hearing and determination of the application herein.
  3. That this Honourable court be pleased to issue a temporary order of injunction restraining the 1<sup>st</sup> to 9<sup>th</sup> Defendants by themselves, their successors, personal representatives, agents, assigns and/or employees or anyone claiming in or through them or otherwise howsoever from selling or purporting to sell or offer to sell or offering to sell, disposing off, entering into, remaining, charging, mortgaging, subdividing, pledging or in any manner whatsoever interfering with ALL THAT piece or parcel of land known as title number Kwale/Ngombeni/1104 pending the hearing and determination of the suit herein.
  4. That this Honourable court be pleased to make an order staying the summons and/or all proceedings before the 11<sup>th</sup> Defendant/Respondent with regard to the caution registered by the Plaintiff/Applicant on title number Kwale/Ngombeni/1104 pending the hearing of this application inter parties and further pending the hearing and determination of this suit
  5. That this Honourable court be pleased to issue any other and/or further conservative and/or preservative orders as may be appropriate and/or necessary.
  6. That costs of this application be borne by the Defendants.
2. The application is premised upon the grounds on its face and the supporting affidavit of Randolph M Tindika an Advocate of this Court and who is the Plaintiff/Applicant. It is averred that the 1<sup>st</sup> Defendant was the only surviving administrator of the estate of Hasina Mohamed Hamisi, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were the legal/personal representatives of the estate of Kabibi Mwamadi, the 4<sup>th</sup> and 5<sup>th</sup> Defendants were the administrators of the estate of Fatuma Mwinyi Kombo, the 6<sup>th</sup> and 7<sup>th</sup> Defendants are the administrators of the estate of Amina Salim Mwacharo while the 8<sup>th</sup> and 9<sup>th</sup> Defendants were the legal representatives of the estate of Rukia Salim Mwacharo.
  3. That vide a written sale agreement with the legal representatives listed above and at paragraph 3 of the supporting affidavit, the Plaintiff/Applicant purchased the suit property Kwale/Ngombeni/1104 at a consideration of Kshs 57,120,000/-. That 10% of the purchase price was first made to the vendors and the purchase price has overtime been simultaneously paid to the vendors as per the agreement. The terms of the agreement are stated at paragraph 6,7 and 8 of the affidavit. At paragraph 9 the applicant states that at the time of execution of the agreement, grants over the estates of the respective deceased persons had been issued by the High court vide Mombasa Succession Causes No 444 of 2011,495 of 2011 and 68 of 2012.
  4. That however the summons for confirmation of grant for the estate of Fatuma Mwinyi Kombo were not confirmed as the 5<sup>th</sup> Defendant in a bid to frustrate the land sale transaction refused to appear before court for confirmation and filed succession proceedings before the Kadhis court. That filing of a succession cause before the Kadhis court was to frustrate the completion of the transaction. The Applicant states that upon being served with the judgement before the Kadhis court, he moved to have the same set aside as instructed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The applicant states that he has



always been willing to complete his part of the bargain but the same has been frustrated by the 1<sup>st</sup> to 9<sup>th</sup> defendants who have failed to cooperate. That he has information that the 1<sup>st</sup>, 4<sup>th</sup>-9<sup>th</sup> defendants are negotiating with another buyer over the suit property and hence the frustration they are giving him through the 10<sup>th</sup> defendant. The applicant asks that his application is allowed as prayed.

## **Response**

5. In opposing the application, the Defendants filed a replying affidavit sworn by the 4<sup>th</sup> Defendant Mwanamkasi Mwinyi Kombo as one of the administrators to the estate of Fatuma Mwinyi Kombo with the authority of the 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendants. It is stated that the Applicant while representing the various estates in the succession cause intimated to the beneficiaries that in the event anyone would be interested in selling the suit property he would procure a buyer.
6. It is further averred that sometime in the year 2014 the Plaintiff requested to meet the administrators and informed them that he was going to purchase the suit property. That he had come with an agreement which had already been prepared. That while the rest of the administrators appended their signatures on the agreement, the deponent together with Mwalimu Mwinyi Kombo did not sign the same. According to the deponent, the low price suggested by the Applicant as consideration for the suit property KWALE/NGOMBENI/1104 is among the reasons she refused to append her signature on the agreement. Further that the letters of administration to the estate of the deceased were yet to be confirmed to enable all the beneficiaries' consent to the sale of their portions.
7. It is further deponed that the plaintiff tried intimidating her to sign the agreement and left with the copies without leaving any to the beneficiaries who had signed. That the signatures allegedly belonging to her and Mwalimu Mwinyi Kombo are a forgery. Further that the agreement is undated and she never appeared before Adv. Apollo Muinde to sign any agreement. It is stated that the rest of the beneficiaries have lodged a criminal complaint against the applicant and the matter is pending investigation before the DCI. The court is urged to look at the grant issued by the court and which does not list the plaintiff as a purchaser with any beneficiary interest. That the plaintiff despite having no proprietary rights to the suit property has purported to lease the suit property to China Civil Engineering Construction Cooperation Limited and the said company is using the suit property as a yard in their construction of the Dongo Kundu Road. What the deponent maintains is that there exists no legally binding agreement between the Plaintiff/Applicant and the beneficiaries to the estate of Fatuma Mwinyi Kombo. The court is urged to disallow the application as prayed.

## **Supplementary Affidavit**

8. The Applicant filed a supplementary affidavit on 18/4/2023. The contents of the affidavit in support of the application are reiterated and a response is made to the averments raised in the replying affidavit opposing the application. The Applicant refers to the averments raised in the said affidavit as deceptive with the intention of misleading the court. That prior to the purchase of the suit property, several meetings were held in the presence and involvement of all the beneficiaries listed as Defendants 1 to 9. That the purchase price was unanimously agreed upon and the amount was to be paid separately to each of the 5 matriarchs of the respective families. At paragraph 6 of the affidavit, the Applicant outlines the various payments and the cheque details. That the 4<sup>th</sup> Defendant has been issued with cheques amounting to Kshs 1,022,400/- and cannot state that she has never been involved in the transaction.
9. It is stated that by the Applicant that there has been several attempts at an out of court settlement but the same has always failed. At paragraph 21 of the affidavit, the Applicant lists various suits in which the defendants have been parties and which he states have been represented by him in court. That it is



apparent the defendants have found a new buyer for the suit property and hence the averments that have been raised in the replying affidavit and which the applicant denies.

### Submissions

10. The submissions in this matter were filed electronically by the applicant, counsel for the 1,4- 9<sup>th</sup> Defendants filed skeleton submissions dated 29/5/2023. There are no submissions on record for the 10<sup>th</sup> 11<sup>th</sup> and 12<sup>th</sup> defendants. The court has considered the submissions on record.

### Determination

11. On 20/4/2023 when this matter came up for interparties hearing of the application, Mr Tindika asked the court for grant of prayers 2,3 and 4 in the interim and which was opposed by Mr Olwande for the 1<sup>st</sup>,4<sup>th</sup> - 9<sup>th</sup> Defendants. It was confirmed that the Applicant was holding the title of the suit property and with this I deemed it prudent that status quo orders would suffice awaiting the hearing and determination of the application.

12. From the evidence that has been tendered before court through the affidavits on record, several issues have emerged. The validity of the land sale agreement for the suit property has been raised by the 1<sup>st</sup> to 9<sup>th</sup> Defendants as some of the parties allege the signatures appended besides their names are forged. It has also been alleged that the transaction over the property took place before completion of the succession process. The Applicant denies these allegations. The suit property is presently registered under the Applicant's name. The issues raised herein can only be ascertained once the court gets the benefit of hearing the parties herein by way of viva voce evidence. With the status quo orders in place, the Defendants can in no way transact on the property as alleged. Moreover, the Applicant has registered a caution over the suit property. I am of the opinion that the status quo orders should be in place until the matter is fully heard and determined for the reasons below.

The Black's Law Dictionary, Butter Worths 9<sup>th</sup> Edition, defines Status Quo as a Latin word which means "the situation as it exists".

13. The purpose of an order of status quo has been reiterated in a number of decisions:
14. 14 In Republic Vs National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] e KLR, Odunga J. stated,

"When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario..."

15. In TSS Spinning & Weaving; Company Ltd Vs Nic Bank Limited & another [2020] e KLR, the unpacked the purpose of a status quo order as follows:

"In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention."

16. It is noteworthy that the Applicant was keen on having injunctive orders against the 1<sup>st</sup> to 9<sup>th</sup> Defendants as stated in prayers 2 and 3 of the application. The question therefore is whether in opting



to grant status quo orders the court will be acting inappropriately since the same has not been sought in the pleadings and whether it differs from an injunctive order. The court in *Thugi River Estate Limited & another Vs National Bank of Kenya Limited & 3 others* [2015] e K.L.R expressed that a status quo order can be given by the court exercising its general jurisdiction and need to have been prayed for by the parties in the suit thus; -

“Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts’ further orders. It is intended to also freeze the state of affairs. State of affairs however do not always remain static, so it is always crucial for the court to be very specific and neat in its description of what state of affairs is to be preserved.”

17. The difference between the two principles was clearly stated in *Murithi Jin Boobab Beach Resort* as quoted by *F. Tuiyot Saifudeen Abdullahi & 4 Others* in *Mombasa High Court Misc. Civil Cause No. 11 of 2012*, where the court described the nature of a status quo order as follows:

“In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”

18. Guided and persuaded by the above, it is clear that status quo orders can be granted by the court suo motto and most importantly for the purpose of preserving the subject matter of the property, a case management strategy, where the court is keen to prevent prejudice as between the parties to a matter pending the hearing and determination of the main suit. In the persuasive dictum in *Texaco Ltd Vs Mulberry Ltd* [1972]1 WLR 814 the court had this to say; -

“The end result is that status quo orders will issue not just when the court is prompted by way of formal applications for injunction or conservatory or stay orders, but also when the court is of the view that as a case management strategy it would be more proportionate and appropriate without prejudicing one party but both, to issue a “status quo” order.”

19. It is evident that the suit is highly contested and the parties are emotive over their respective cases and which is understood given the high monetary value of the suit property. It will be proper to grant orders that will not prejudice either of the parties and to prevent further prejudice.
20. The Applicant further seeks for orders staying the summons and/or all proceedings before the 11<sup>th</sup> Defendant/Respondent with regard to the caution registered by the Plaintiff/Applicant on title



number Kwale/Ngombeni/1104. From the record, an affidavit has been sworn by the Investigating Officer in the criminal matter detailing an ongoing investigation with regards to the Applicant's registration as proprietor of the suit property. Section 52 (1) of the *National Police Service Act* grants a police officer power to summon any person believed to have information which may assist in investigation to appear before the police in a police station. The said Section reads as follows:

“(1) A police officer may, in writing, require any person whom the police officer has reason to believe has information which may assist in the investigation of an alleged offence to attend before him at a police station or police office in the county in which that person resides or for the time being is.”

21. Odunga J. in *Isaac Tumunu Njunge v Director of Public Prosecutions & 2 others* [2016] eKLR, pointed with regard to the power of the police to investigate:

“42. It is however my view that the police are clearly mandated to investigate the commission of criminal offences and in so doing they have powers inter alia to take statements and conduct forensic investigations. In order for the applicant to succeed he must show that not only are the investigations which were being done by the police are being carried out with ulterior motives but that the predominant purpose of conducting the investigations is to achieve some collateral result not connected with the vindication of an alleged commission of a criminal offence. It must always be remembered that the motive of institution of the criminal proceedings is only relevant where the predominant purpose is to further some other ulterior purpose and as long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene.”

22. In the instant suit, it is clear that no charges have been preferred against the Applicant yet. Any summons and proceedings before the police are obviously for investigative purposes and as provided for by statute hereinbefore, this is the preserve of the police. The court cannot purport to stop the 10<sup>th</sup> Respondent from carrying out their duties. The Applicant has failed to demonstrate any prejudice that has been or is to be suffered by the summons investigating the registration of the caution on the suit property. The 4<sup>th</sup> prayer in the application is hereby denied.

23. In the upshot, the Court issues an order for status quo and which for the avoidance of doubt shall entail the following:

1. That there shall be no further activities at the disputed parcel Kwale/Ngombeni/1104. Any activities which are ongoing to forthwith cease.
2. There shall be no sale, charging or transferring of proprietary interest of the land or any dealings on the suit property Kwale/Ngombeni/1104 by either parties herein.
3. The said status quo to remain in force pending the hearing and determination of this suit.
4. As regards costs, the same shall be in the cause.

Orders accordingly.

**RULING DATED SIGNED AND DELIVERED THIS 22<sup>ND</sup> DAY OF OCTOBER 2024**

**A E DENA**



## **JUDGE**

Mr. Tindika for the Plaintiff applicants

Mr. Mwandeje Holding for Ms. Langat for 10,11<sup>th</sup> and 12<sup>th</sup> Defendant

No appearance for the rest of the Defendants

Ms. Asmaa Maftah-Court Assistant

