



**Munda & 2 others v Keya & 5 others (Environment & Land Case
E037 of 2024) [2024] KEELC 13436 (KLR) (19 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13436 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE E037 OF 2024**

AE DENA, J

NOVEMBER 19, 2024

BETWEEN

**MWANASITI KEA MUNDA 1ST APPLICANT
MOHAMED RAMA MWABARUWA 2ND APPLICANT
HAMISI RAMA MWABARUA 3RD APPLICANT**

AND

**ALFANI KEYA 1ST RESPONDENT
HALFANI KEYA 2ND RESPONDENT
ALMASI ALFANI MUNDA 3RD RESPONDENT
KASSIMU ALFANI MUNDA 4TH RESPONDENT
PHILIP ODHIAMBO 5TH RESPONDENT
KWALE COUNTY LANDS REGISTRAR 6TH RESPONDENT**

RULING

1. The Plaintiffs/Applicants vide the Notice of Motion dated 11/6/2024 seek for the following orders;
 1. SPENT
 2. That pending the inter parties hearing and determination of this application, this Honourable court do issue a temporary injunction restraining the Respondents whether by themselves or through their servants, employees, agents or any one deriving title through them from evicting the applicants from the suit property Kwale / Ukunda S. S/620
 3. That pending the interpartes hearing and determination of this suit, this honourable court do issue a temporary injunction restraining the respondents whether by themselves or through



their servants, employees, agents or anyone deriving title through them from evicting the Applicants from the suit property Kwale / Ukunda S. S/620

4. That pending the inter partes hearing and determination of this application, this Honourable court do issue an order compelling the 6th Respondent herein to provide records for the parcel number Kwale / Ukunda S. S/620 and all the subsequent sub divisions arising from the said parcel to date
 5. That this Honourable court be pleased to issue any other order it deems just and fit in the circumstances.
 6. That costs of this application be provided for
- 2 The application is based on grounds listed on its face and the supporting affidavit of Mohamed Rama Mwabaruwa. The deponent avers that the applicants are the beneficial owners of parcel No. Kwale / Ukunda S. S/620 (hereinafter referred to as the suit property) which is a subdivision of Kwale / Ukunda S. S/2 previously owned by their grandfather HALFANI JUMA. That prior to his death, the applicants had been in occupation of the suit property and have built both commercial and residential houses thereon. That sometime in the year 2011 after the death of both their grandfather and mother, the 2nd to 4th Defendants/Respondents tried to evict them from the suit property but the Kadhis court intervened vide Kwale Succession Cause No. 304 of 2012 Estate of Halfani Juma by issuing orders on 12/5/2014 that the shares of the deceased heirs devolve and vest in their respective children with the male getting twice the share of the female.
- 3 The Plaintiffs state that they were supposed to get ½ an acre being their mother's portion as she was a direct heir. That as per the orders of the Kadhis court, the same was to be perfected and titles to be issued. That the applicants tried following up on the titles as they were already in occupation of the land but were told by the 2nd and 3rd and 4th Respondents to wait. That they later noticed the 3rd and 4th Respondents were finding buyers for their allocated parcel and lodged a complaint at the chief's office. The chief made a resolution that the title to the Applicant's late mother be issued to them but surprisingly the parcel had already been illegally sold to the 5th Respondent as per records at the land's registry. That the 5th Respondent has begun construction of a wall on the suit property blocking the Applicants entrance to their premises and has further served them with a notice to cease utilising and occupying the parcel. The Applicants are apprehensive that they will be evicted from their parcel and maintain that the 5th Respondent's acquisition of the parcel is fraudulent as particularised under paragraph 24 of the supporting affidavit. The court is urged to allow the application as prayed.

Response

- 4 In opposing the application, the Respondents filed several replying affidavits as follows;
- 5 The 1st Respondents replying affidavit is dated 17/6/2024. The deponent states that he is a grandchild to the late Halfani Juma and a beneficiary to the property KWALE/UKUNDS/SS/2. It is stated that the Applicants are beneficiaries too to the estate of the deceased but have invaded the portions of the rest of the beneficiaries and put up makeshift structures over the same. That the Applicants were informed that the structures were on the Respondent's parcel and that they were to move to the land shown to them by their uncles. That the Applicants then became abusive and threatened the respondents with machetes and stone throwing. That after the succession cause, the land was subdivided among the beneficiaries and the deponent states that he got 2 acres on behalf of his deceased father. That his share is the suit property and the same was later sold to the 5th Defendant. It is stated that the Applicants actions amount to forcible detainer. That it is the 3rd and 4th Defendants who are



- responsible for the sharing of the land and not the 1st Respondent. The court is asked to dismiss the application.
- 6 The 3rd and 4th Respondents replying affidavit was sworn by the 3rd Respondent on behalf of the 4th Respondent. He avers that they are the sons of the deceased Halifan Juma. That the Applicants are the children to their deceased sister Saumu Alfani Munda. The parties state that it is he, 1st and 2nd Respondents that have had issues with the Applicants pertaining to their shares on the suit property. That they did act in accordance to the orders issued at the Kadhis court and ensured that each beneficiary got a share of the estate of the deceased as had been ordered. The 3rd and 4th Respondents deny engaging in any sale of the suit property to the 5th Defendant and state that they were never a party to the same.
- 7 The 5th Respondents replying affidavit is dated 17/9/2024. The deponent avers that he is the bona fide purchaser for value of the suit property Kwale / Ukunda SS/620 situated at Kona Ya Musa area of Ukunda Kwale County. That the property was purchased from the 1st and 2nd Defendants legally and in good faith without any notice of defect in interest in the title. The 5th Defendant states that before purchase he had conducted proper due diligence in verifying ownership of the parcel and the same was legitimised by documents from the Kadhis court. That it was until the matter was brought to court that he heard of the other claim to the land. The application is termed as being an abuse of the court process and an ignorance of the orders issued at the Kadhis court. The 5th Respondent prays that the application is dismissed with costs.
- 8 When this file was first placed before court under Certificate of Urgency, the following orders were issued;
1. The Notice of Motion application dated 11th June 2024 is hereby certified as urgent
 2. The application shall be served upon the Defendants by close of business on 12th June 2024
 3. The Defendants/ Respondents shall respond to the application and the suit within 5 days of service
 4. The Notice of Motion dated 11th June 2024 shall be heard interpartes on 24th June 2024 at 8.30am.
- 9 The 6th Defendant has not participated in the proceedings.
- 10 On 24/6/2024 parties failed to appear before court. The court ordered that the application be dispensed off by written submissions.

Submissions

- 11 The Applicant's submissions are dated 3/9/2024, the 1st, 2nd and 5th Defendants submissions are dated 17th September 2024. The 3rd and 4th Defendants submissions are dated 26th September 2024. The court has considered all the submissions on record and the Replying affidavits.

Determination

12. It is not in dispute that the Plaintiffs and the 1st to 4th Defendants herein are beneficiaries to the estate of the late HALFANI JUMA. It is also not disputed that vide Succession Cause No 304 of 2012 before the Kadhis court in kwale, the estate of the deceased was distributed among the beneficiaries herein. The main asset distributed in the succession cause was land parcel No Kwale / Ukunda SS/2. Upon its sub division, the property was divided amongst the beneficiaries and the suit property herein awarded to the



1st and 2nd Defendants who were not the original heirs but grandsons to the deceased. The distribution as per the pleadings on record, was effected by the 3rd and 4th Defendants who are the original heirs and uncles to the Plaintiffs and the 1st and 2nd Defendants.

- 13 According to the Plaintiffs, the suit property herein Kwale / Ukunda S. S/620 was a sub division of the original parcel Kwale / Ukunda SS/2. Initially before the subdivision, the suit property was in occupation of all the beneficiaries. The Applicants state that they were physically on the suit property Kwale / Ukunda S. S/620. That however upon perfecting the distribution as ordered by the Kadhis Court, the 3rd and 4th Defendants re assigned the suit parcel to the 1st and 2nd Defendants and who have in turn sold the same to the 5th Defendant herein and thereby displacing them.
- 14 The 5th Defendant does not dispute purchasing the suit property. From the evidence on record, he is developing the same and has put up a wall which the Applicants state has blocked their access to their homes. From the photographs attached to the application by the Applicants, an upcoming wall is visible and with structures enclosed. The 1st and 2nd Defendants/Respondents dispute the allegation that the suit property has been in physical occupation of the Applicants and state that on the flip side, it is the Applicants who have encroached on the 1st and 2nd Defendants portion by putting up make shift structures on the same. The 3rd and 4th Defendants maintain the distribution was done fairly and in accordance with the orders issued at the Kadhis Court on distribution.
- 15 The Applicants seek for injunctive orders against the Defendants and state that they are apprehensive that the 5th Defendant who is currently the registered owner of the suit property might evict them. From the chronology of events outlined above and the evidence on record, the court cannot tell with certainty the occupation of the suit property pre distribution of the estate and subdivision. This evidence can only be put forth in a more comprehensive manner by way of viva voce evidence at the hearing of the suit. For now, the court is more inclined towards issuing status quo orders for preservation of the suit property pending the hearing and determination of this suit. It is only after hearing both parties that the court can make an informed determination and decision as to the ownership of the suit property.
- 16 The Black's Law Dictionary, Butter Worths 9th Edition, defines Status Quo as a Latin word which means "the situation as it exists".
- 17 The purpose of an order of status quo has been reiterated in a number of decisions:
- 18 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..."
- 19 In the case of Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR, the purpose of a status quo order was explained as follows: -
- "... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision."



20 The court in the case of *Fatuma Abdi Jillo v Kuro Lengesen & another* [2021] eKLR gave a distinction on the nature of status quo orders vis a vis injunctive orders, it was stated as follows: -

“Murithi Jin Boabab Beach Resort as quoted by F. Tuiyot Saifudeen Abdullahi & 4 Others in Mombasa High Court Misc. Civil Cause No. 11 of 2012, 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.”

21 Further, in the case of *Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others* [2015] eKLR, Onguto J stated that an order of status quo can be given by the court exercising its general jurisdiction and that the order need not necessarily be prayed by the parties and in fact, can be originated by the court.

“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.”

22 Apart from preserving the substratum of the subject matter, the court is keen on granting status quo orders as a case management strategy. The circumstances in this matter demonstrate that both parties as it stands have an interest that needs to be preserved pending the determination of this suit. To meet the end of justice, neither party should be prejudiced. The court is intentional on preventing further prejudice between the parties herein.

23 Accordingly, 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 constructions or development at the suit parcel Kwale / Ukunda S. S/620. Constructions which are ongoing to forthwith cease.
2. There shall be no eviction of any party from the suit parcel Kwale / Ukunda S. S/620.
3. The said status quo to remain in force pending the hearing and determination of this suit.
4. Prayer No. 4 shall be addressed under case management protocols.



5. Costs of the application shall be in the cause.

Orders accordingly

RULING DATED SIGNED AND DELIVERED THIS 19TH DAY OF NOVEMBER 2024

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A E DENA

JUDGE

Ms. Ndiege Holding Brief for Ms. Oguna for Applicants

Ombache for 1st 2nd 5th Respondents

Mr. Mbwiza for 3rd and 4th Respondents

No Appearance for 6th Respondent

Asmah Maftah – Court Assistant

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