



**Ethics and Anti Corruption Commission v Maundu & 5 others; Kenya  
Deposit Insurance Corporation (Interested Party) (Environment & Land Case  
E162 of 2023) [2024] KEELC 13345 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13345 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E162 OF 2023  
LN MBUGUA, J  
NOVEMBER 14, 2024**

**BETWEEN**

**ETHICS AND ANTI CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**PETER ELIUD MUTUA MAUNDU ..... 1<sup>ST</sup> DEFENDANT**

**SWANYA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**VICTOR SWANYA OGETO ..... 3<sup>RD</sup> DEFENDANT**

**JANET NYANDUKO OGETO ..... 4<sup>TH</sup> DEFENDANT**

**WILSON GACANJA ..... 5<sup>TH</sup> DEFENDANT**

**DAIMA BANK LIMITED (IL) ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**KENYA DEPOSIT INSURANCE CORPORATION ..... INTERESTED PARTY**

**RULING**

1. Before me are two Preliminary Objections for determination, the 1<sup>st</sup> one dated 19.3. 2024 brought forth by the 2<sup>nd</sup> – 4<sup>th</sup> defendants, while the other one is dated 15.4. 2024 filed by the 1<sup>st</sup> defendant.

**The Preliminary Objection dated 19.3.2024**

2. The 2<sup>nd</sup> - 4<sup>th</sup> defendants raise two grounds in their above mentioned Preliminary Objection, which are;



1. That this court lacks jurisdiction to set aside or vary any portion of the Consent Order adopted on 9<sup>th</sup> July 2014 by the 2<sup>nd</sup> Defendant and the 6<sup>th</sup> Defendant in Nairobi Civil Appeal No. 270 of 2001; Swanya Limited v Dima Bank Limited.
2. That the notice of claim against the 2<sup>nd</sup> - 4<sup>th</sup> defendants dated 31.10.2023 by the 6<sup>th</sup> defendant is res-judicata and violates Section 7 of the *Civil Procedure Act*. Any and all issues relating to settlement of any outstanding debt due from the 2<sup>nd</sup> Defendant arising from the judgment issued in Nairobi HCCC no. 1849 of 1996, Swanya Limited v Dima Bank Limited were settled by the Consent Order adopted on 9.7.2014 by the 2<sup>nd</sup> defendant and the 6<sup>th</sup> defendant in Nairobi Civil appeal No. 270 of 2001, Swanya Limited V Daima Bank Limited.

#### **The Preliminary Objection dated 15.4.2024**

3. The 1<sup>st</sup> defendant raises two grounds in the above mentioned Preliminary Objection namely;
  - a. That the court lacks jurisdiction to entertain a challenge of I.R. No. 65477 pursuant to provisions of Section 23 of the Registration of Titles Act Cap 281.
  - b. That the Court is bound by the provisions of Article 163 (7) of the *Constitution* of Kenya.
4. On 24.4.2024, the court gave directions that the two Preliminary Objections be heard by way of written submissions.
5. The Submissions of the 1<sup>st</sup> defendant are dated 24th May 2024. He contends that the 2<sup>nd</sup> defendant was at all material times the registered proprietor and absolute and indefeasible owner of parcel IR 65477. That for the 1<sup>st</sup> defendant, he was only a holder of the allotment letter of the suit property and that at no point was he the registered proprietor of the suit property. Therefore, this suit does not disclose any valid cause of action against him. Adding that the suit land is private property granted to the 2<sup>nd</sup> defendant by the President of the Republic of Kenya.
6. In support of his case, the 1<sup>st</sup> defendant relies on the case; Petition No. 5. (E006) of 2022 between Torino Enterprises Limited and the Honourable Attorney General.
7. The submissions of the 2<sup>nd</sup> - 4<sup>th</sup> defendants are dated 21.6. June 2024. They contend that this suit is resjudicata to the case Nairobi HCCC No. 1849 of 1996, and Nairobi Civil Appeal No. 270 of 2001 (Swanya Limited v Daima Bank Limited) where the matter was settled via a consent dated 9.7.2014.
8. It is argued that the terms of the said consent are binding on this court under the principle of stare decisis. That this being a lower court, then the same lacks jurisdiction to vary or set aside the terms set out therein.
9. Further, it is argued that the 6th defendant cannot pursue its notice of claim before this court against them as the said claim does not relate to title, use and occupation of land as provided for under Article 162 (2) (b) of the *Constitution* and Section 13 of the *Environment and Land Court Act*. Adding that the 6<sup>th</sup> defendants purported remedy, if any, lies in execution of proceedings before the Court of Appeal and not before this court.
10. In support of their case, the 2<sup>nd</sup> - 4<sup>th</sup> defendants rely on the cases of Samuel Mbugua Ikumbu v Barclays Bank of Kenya Limited [2015] eKLR, John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR.



11. The plaintiffs submissions are dated 30.4. 2024. They are filed in opposition to the Preliminary Objection of the 1<sup>st</sup> defendant only (the one dated 15.4.2024). They contend that at paragraph 14 of their plaint, they have enumerated the particulars of fraud as against the defendants, which brings the plaintiffs claim squarely within the exceptions envisioned under section 23 of RTA.
12. The submissions of the 6<sup>th</sup> defendant and the Interested Party are dated 23.5.2024. They have been filed in opposition to the Preliminary Objection of the 2<sup>nd</sup> - 4<sup>th</sup> defendants dated 19.3.2024. They contend that the said Preliminary Objection is defective and devoid of merit as it does not raise pure points of law contrary to the principles set out in the case of Mukisa Biscuit Manufacturers Limited v Western Distributors (1969) EA 696.
13. They aver that the consent order of 9.7.2014 was subject to the fact that the 2<sup>nd</sup> defendant was the registered proprietor of the suit property, and the fact that the suit property was used as security for a loan facility from the 6<sup>th</sup> defendant. That whereas they (6<sup>th</sup> defendant and the interested party) are not challenging the said consent order, they are seeking indemnity in accordance with the provisions of Section 91 of the *Land Act* should this court find that the title of the suit property was fraudulently acquired. They therefore contended that this suit is not res-Judicata. They rely on the cases of Kenya Anti Corruption Commission v Willesden Investments Limited & 7 Others 2019 eKLR, Peter Mungai V Joseph Ngaba Kuria & Another; Leah Njeri Ndichu (Interested Party) (2022) eKLR amongst other cases.
14. I have considered all the arguments raised herein as well as the court record. It is apparent that this court delivered a ruling on 4.12.2023 relating to yet another Preliminary Objection which had been raised by the 1<sup>st</sup> defendant.
15. In the case of Henderson v Henderson [1843] 67 ER 313 cited in John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR, it was stated that;

“.....Where a given matter becomes the subject of litigation in and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward, as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case”.
16. In the aforementioned ruling of 4.12.2023, the court rendered its verdict on the question of jurisdiction of this court. The 1<sup>st</sup> defendant is therefore estopped from regurgitating now and then other Preliminary Objections relating to the same question. The same case applies to the other defendants. In particular, this court refers to the contents of paragraph 11 of the said ruling where this court stated that “the plaintiff has a statutory mandate to file a suit before this court for the recovery of public property.” To this end, this court pronounced itself on the status of the consent made in the Court of Appeal to the effect that the Court of Appeal did not determine the veracity of the title in question.
17. To this end, this court will not rehash the issues determined in the said ruling all over again.
18. Needless to state that it is quite apparent that the defendants are in a quest to create a Gordian knot so as to derail the trial. They ought to articulate their issues through their respective pleadings and then prepare for the trial instead of filing a plethora of Preliminary Objections; see – Lawrence Kinyua Mwai v Nyariginu Farmers Co. Ltd & Another [2019] eKLR.



19. In the circumstances, the two Preliminary Objections dated 19.3.2024 and 15.4.2024 are hereby dismissed and each party is to bear their own costs of the two Preliminary Objections.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>th</sup> DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:**

Kemunto holding brief for Wambugu for Plaintiff

Mima holding brief for Dr. Ojiambo SC for 2<sup>nd</sup> – 4<sup>th</sup> Defendants

M/s Munda holding brief for Kiprotich for 5<sup>th</sup> Defendant

M/s Kangu for 6<sup>th</sup> Defendant and Interested Party

Wachira holding brief for Koki M. for 1<sup>st</sup> Defendant

Court Assistant: Vena

