



**Taura v Kombe & another (Environment & Land Case E030 of 2022)
[2024] KEELC 7523 (KLR) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7523 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E030 OF 2022
FM NJOROGE, J
NOVEMBER 12, 2024**

BETWEEN

SIDI NDORO TAURA PLAINTIFF

AND

CHAROLI NZAI KOMBE 1ST DEFENDANT

MAIMUNA AWADH 2ND DEFENDANT

RULING

1. The present suit raises the issue of alleged lack of spousal consent in the sale of a property. the plaintiff is the wife of the 1st defendant and is the complainant in respect of that issue. The 2nd defendant is the purchaser. The 1st defendant sold the 2nd defendant the suit land allegedly without seeking spousal consent from the plaintiff.
2. The plaintiff, represented by Mr Michira, testified on 22/10/2024. Mr Ogeto for the 1st defendant was present until the plaintiff finished testifying, and he cross-examined her. He applied to be excused from the hearing as the 1st defendant had filed nothing in terms of defence, and that he did not intend to testify in the matter. Thereafter two more witnesses testified in the plaintiff's case and it was closed. The court indicated that in view of what Mr Ogeto had said earlier the 1st defendant's case should be closed, and it was.
3. Ms Bujra for the purchaser the 2nd defendant then rose and made an application that summons do issue to the 1st defendant to attend court and testify. Mr Michira wondered aloud whether Ms Bujra intended to call the 1st defendant as a witness yet she had not opposed the excusing of Mr Ogeto from the proceedings. This court doubts that it may suo moto or on the motion of Ms Bujra bar Mr Ogeto from leaving the proceedings midway. That is a matter solely between him and his principal the 1st defendant and it has been recorded in the file.



4. In this case the person expected to be summoned is a party to the case. This changes all the dynamics of the case since he is expected to appear in court and defend his interest in the matter whether he is the husband to the plaintiff or not. This court is not inclined, unless for a good reason, to compel a party to attend court and participate in his own case for his own interest, at the application of an adversary in the same case. Besides, each party ought to establish his or her case by evidence and where there is none the case falls for lack thereof. In the present case the 2nd defendant's burden is to disprove the plaintiff's allegation that there was spousal consent. That there was or there was not any spousal consent in a properly and procedurally executed sale should not be a matter solely within the knowledge of the plaintiff and the 1st defendant only and the 2nd defendant ought to be in a position to establish its existence.
5. The upshot is that this court is constrained for the above reasons to disallow, and it hereby declines, Ms Bujra's application for witness summons against the 1st defendant. As other parties have closed their respective cases the 2nd defendant's case will be heard on 22/1/2025. The defendant and her witnesses shall appear in court to give evidence without fail on that date.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 12TH DAY OF NOVEMBER, 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

