



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyikiaa v Wanyoike; Ildamat Ventures Limited (Interested Party) (Cause 660 of 2017) [2024] KEELC 7457 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7457 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**CAUSE 660 OF 2017**  
**MN GICHERU, J**  
**NOVEMBER 11, 2024**

**BETWEEN**

**VIRGINIA SEIN NYIKIAA ..... PLAINTIFF**

**AND**

**ERICK MACHARIA WANYOIKE ..... DEFENDANT**

**AND**

**ILDAMAT VENTURES LIMITED ..... INTERESTED PARTY**

**RULING**

1. This ruling is on the notice of motion dated 17/11/2023. The motion which is brought under Article 159(2) of *the Constitution*, Sections 3 and 19 of the Environment and Land Court, Sections 107 and 109 of the Evident Act, 1A, 1B, 3, 3A and 80 of the *Civil procedure Act*, Order 45 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law seeks the following residual orders.
  - 3) Review of the order dated 24/10/2023 directing the County Land Registrar to file a report, after considering all the documents submitted by the parties, determining who owns the suit land.
  - 4) The court to determine the dispute with the evidence on record.
2. The motion is based on eleven (11) grounds and supported by an affidavit sworn by the director of the interested party dated 17/11/2023. The gist of the above material is as follows. Firstly, each of the parties was heard conclusively and exhaustively. Secondly, the court gave a date for judgment and each side filed its written submissions. Thirdly, to the surprise of the interested party, the court on its own motion directed that the evidence of the County Land Registrar was crucial in determining the ownership of the land in dispute. Fourthly, seeking the report of the County Land Registrar to be on record is tantamount to the court abdicating its role of determining the dispute to the



County Land Registrar. Fifthly, this will be prejudicial to the interested party who will not have the opportunity of challenging the report by way of cross-examination. Sixthly, the plaintiff has the burden of proof and the order directing the County Land Registrar files a report disrupts the long standing procedure of conducting cases within the adversarial system of civil litigation particularly the architecture established by the *Evidence Act*. Finally, since the parties did not call the County Land Registrar as a witness, the court should determine the dispute with the evidence adduced by the parties.

3. The motion is opposed by the plaintiff who has filed seven grounds of opposition dated 18/1/2024, which are as follows. The motion is,
  - i. frivolous and vexatious and,
  - ii. has not attached the order to be reviewed. secondly,
  - iii. the direction were proper,
  - iv. the applicant has not satisfied the conditions necessary for the grant of review of orders,
  - v. the applicant has not disclosed how it is aggrieved by the order,
  - vi. the application is an abuse of the court process, and
  - vii. the application ought to be struck out with costs.
4. Counsel for the parties were to file written submissions by 30/9/2024. The only submissions that I see on record are those by the interested party dated 18/6/2024. The single issue identified in the submission is this.

**(i). Whether the court should review the directions of 24<sup>th</sup> October 2023.**

5. I have carefully considered the motion in its entirety including the grounds in support, the supporting affidavit and the grounds of opposition. I find that the motion has no merit for the following reasons. Firstly, the directions dated 24/10/2023 have not stated that the County Land Registrar will not be called as a witness to be cross-examined on the report that he will file. Secondly, even though our system is adversarial, the court has jurisdiction under Section 1A (3) of the *Civil Procedure Act* to give directions which the parties must comply with. It provides as follows.

“A party to civil proceedings or an advocate for such a party is under a duty to assist the court to further the overriding objective of this Act and, to that effect, to participate in the processes of the court and to comply with the directions and orders of the court”.

Parties are bound to comply with court directions. The directions given on 24/10/2023 were fair to both parties because each party was to serve the County Land Registrar with their own documents of ownership of the suit land.

6. Thirdly, under Section 1B (a) of the *Civil Procedure Act*, the court is commanded to handle all matters presented before it for the purpose of attaining the just determination of the proceedings. It provides as follows.

For the purpose of furthering the overriding objective specified in Section 1A, the court shall handle all matters presented before it for the purpose of attaining the following aims –

- (a) The just determination of proceedings”.



In this suit, we have two sets of documents presented by the parties. The county Land Registrar is in a good position to assist the court in determining which of the sets is genuine and why. Should this evidence be locked out? Will the court be administering justice by locking out this crucial evidence? Is the fair hearing envisaged by Article 50(1) of *the Constitution* to be attained in a trial where relevant and admissible evidence is excluded? It is my finding that the evidence of the County Land Registrar is necessary in this case and it will not prejudice a fair trial.

For the above stated reasons, I find no merit in the motion dated 17/11/2023 and I dismiss it. Costs in the cause.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY 11<sup>TH</sup> DAY OF NOVEMBER 2024.**

**M.N. GICHERU**

**JUDGE**

