



**Ononia v Lukiri (Environment & Land Case 154 of 2017)
[2023] KEELC 17922 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 17922 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 154 OF 2017
BN OLAO, J
JANUARY 31, 2023**

BETWEEN

CONSOLINE ATIENO ONONIA PLAINTIFF

AND

SAMWEL MULERA LUKIRI DEFENDANT

RULING

1. Samuel Mulera Likiri (the defendant herein) is clearly a perfect example of an indefatigable litigant. His verve and vigour in pursuing what is clearly a phantom is admirable.
2. But again, Article 50 (1) of the Constitution gives him the platform to approach this Court. It says:
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(1) “Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate another independent and impartial tribunal or body.” Emphasis mine.
Generally, also, a party is entitled to pursue his or her claim in Court notwithstanding how weak it may be. Unless of course the claim is an abuse of the process of the Court.
3. By a plaint originally filed in the subordinate Court before being transferred to this Court, Consoline Atieno Ononia (the plaintiff) sought a refund of Kshs 170,000 from the defendant following a land sale agreement gone sour involving the land parcel No Samia/Luchululo – Bukhulungu/1596 wherein the plaintiff was the purchaser.
4. The case was heard by Omollo J who delivered a judgment dated November 17, 2021 directing the defendant to refund to the plaintiff the Kshs 170,000 and pay costs of the suit and interest at Court rates until final payment is full. A decree was drawn after the plaintiff’s bill of costs was taxed at Kshs 211,740. No appeal was filed.



5. The defendant has now approached this Court vide his Notice of Motion dated September 16, 2022 in which he seeks the following remedies:
 1. There be a stay of issuance of execution orders and/or any other orders arising therefrom pending the hearing and determination of the application.
 2. The plaintiff/respondent herein having been included in Busia Chief Magistrate's Court Succession Cause No 122 of 2021 as a beneficiary/buyer in land parcel No Samia/Luchululo – Bukhulungu/1269 ought not continue pursuing the matter at hand and no further orders be granted to her.
 3. The Court do fix a date for investigating the matter further should it deem it fit and necessary.
6. The application is premised on the provisions of Section 3A of the Civil Procedure Act as well as Order 22 Rules 22, 82(2) and 84 and Order 51 Rule 1 of the Civil Procedure Rules. It is also supported by the defendant's affidavit dated September 16, 2022.
7. The defendant is acting in person and as is typical with pro-se litigants, it is never easy to comprehend their cases. However from what I can glean from the Notice of Motion and the supporting affidavit, his grievance appears to be that although the plaintiff has a decree in her favour in this case as stated above, she is also already a beneficiary in Busia Chief Magistrate Court Succession Cause No E122 of 2021 as per the Certificate of Confirmation Grant. That the plaintiff has even gone further and surrendered to him the copy of her identity card, PIN, two photographs and signed transfer forms. The plaintiff has also convinced him that this matter has been Stood Over Generally (SOG). The plaintiff is therefore flouting the Civil Procedure and Common law by secretly continuing to pursue a claim in Court over a subject matter that she is indeed owning and occupying.
8. In support of his application, the defendant has annexed the following documents to his affidavit.
 1. Photocopy of plaintiff's identity card.
 2. Photocopy of the plaintiff's KRA Pin certificate.
 3. Photographs.
 4. Transfer Forms.
9. The application is opposed and the plaintiff filed a replying affidavit dated September 29, 2022 in which she deposed, *inter alia*, that her claim in this Court was for the refund of the purchase price arising from a botched sale agreement involving the land parcel No Samia/Luchululo – Bukhulungu/1596 as opposed to the land parcel No Samia/Luchululo-Bukhulungu/1269 that is referred to in the application. That on December 18, 2009, he entered into a sale agreement with the defendant for the purchase of a portion of land measuring 0.05Ha out of the land parcel No Samia/Luchululo-Bukhulungu/1596 but the defendant became dodgy and it later transpired that the said land did not exist. That the area chief confirmed as per the letter dated May 23, 2017 that the defendant is a person of wanting moral standing who cannot be trusted as he has been selling non-existent parcels of land to members of the public. That when her efforts to recover the land were thwarted, she filed this suit to recover the purchase price. That she is not a party in Busia Chief Magistrate's Succession Cause No 122 of 2021 and neither does she have any claim to the land parcel No Samia/Luchululo – Bukhulungu/1269 as alleged and neither has she handed over her documents to the defendant. There is no reason why a stay of execution order should issue and this application should be dismissed with costs.



10. Annexed to her replying affidavit are the following documents:
 1. Land sale agreement.
 2. Letters of the assistant chief – Shirekesi sub-location.
11. The application was to be canvassed by way of written submissions as directed by the Deputy Registrar. However only the defendant filed his submission. The record shows that Mr Okeyo counsel for the plaintiff did not file any submissions and on November 29, 2022, the matter was fixed by the Deputy Registrar for ruling before me on January 31, 2023.
12. I have considered the application, the rival affidavits and the submissions by the defendant.
13. The defendant’s case, as I understand it, is that since the plaintiff’s interest in the land parcel No Samia/Luchululo-Bukhulungu/1596 has been addressed in Busia Chief Magistrate’s Succession Cause No E122 of 2021, she should not be allowed to continue pursuing this case.
14. I have looked at the certificate of confirmation of Grant issued on November 23, 2021 in the said Succession Cause and it relates to only two properties:
 1. Samia/Luchululo – Bukhulungu/1269 Lower Part.
 2. Samia/Luchululo – Bukhulungu/1276 Upper Hill Part.

The confirmed Grant does not include the land parcel No Samia/Luchululo – Bukhulungu/1596 which, as is clear from the plaint, is the subject matter of this suit. This Court can only go by the pleadings filed herein and it cannot speculate whether the land parcels No Samia/Luchululo-bukhulungu/1269, 1276 and 1598 are one and the same parcel of land. However, documents speak for themselves and the plaint refers to the land parcel No Samia/Luchululo-bukhulungu/1596 and the confirmed Grant is in respect to land parcels No Samia/Luchululo-bukhulungu/1269 and 1276.

The plaintiff cannot, in the circumstances, be restrained from pursuing any remedy she may seek in this case in respect to the land parcel No Samia/Luchululo-Bukhulungu/1596 which is what the party litigated over in this case.
15. This case cannot also grant any orders of stay of execution. The parameters for the grant of orders of stay of execution are clearly set out in Order 42 Rule 6 of the Civil Procedure Rules.
16. And even if this Court was magnanimous and invoked the inherent powers of the Court under Section 3A of the *Civil Procedure Act* and Article 159 (2) (a) of the *Constitution*, there is really nothing to stay.
17. Finally, the defendant has sought the rather strange prayer that “the Court do fix a date for investigating the matter further should it deem fit and necessary.” It is not within the province of Courts to “investigate” matters. The judicial function of Courts is well spelt out in the relevant laws. This Court is not about to clothe itself with jurisdiction which it does not possess. I do not think that even Article 159(2)(d) of the *Constitution* which is the balm of all ills can come to the aid of the defendant.
18. The up-shot of all the above is that the Notice of Motion dated September 16, 2022 is devoid of merit. It is dismissed with costs.

BOAZ N. OLAO

JUDGE

31ST JANUARY 2023



RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUSIA ON THIS 31ST DAY OF JANUARY 2023.

Mr. Okeyo for plaintiff – Present

Defendant in person – Absent

C/A: Anyasi/Ajwang’

BOAZ N. OLAO

JUDGE

31ST JANUARY 2023

