



Njneni Estates Limited v Miondwe Investment Limited & 5 others; Kenya Planters Cooperative Union & another (Defendant) (Environment & Land Case 228 of 2017) [2023] KEELC 298 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEELC 298 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 228 OF 2017
A OMBWAYO, J
JANUARY 26, 2023**

BETWEEN

NJENENI ESTATES LIMITED PLAINTIFF

AND

MIONDWE INVESTMENT LIMITED 1ST DEFENDANT

KIMKAN ENTERPRISES LIMITED 2ND DEFENDANT

FRANCIS NGARUIYA NJAMA 3RD DEFENDANT

GEORGE GITERE KAHURA 4TH DEFENDANT

KENNETH KIMARI GITERE 5TH DEFENDANT

VALLEY FRESH LIMITED 6TH DEFENDANT

AND

KENYA PLANTERS COOPERATIVE UNION DEFENDANT

SIMON KAMERE T/A KAMERE & CO DEFENDANT

RULING

1. The 2nd defendant in the counter claim has filed an application dated 17th November 2021 seeking orders that the name of the 2nd defendant in the counterclaim be struck out of this suit with costs. The background facts are that on 25th September 2017, the plaintiff filed a suit by way of plaint seeking reliefs against the defendants being eviction, permanent injunction, general damages for trespass and costs of the suit. The defendants filed their respective defences and counter-claims on 27th April 2018. In their counter-claim they introduced the 1st defendant to counterclaim who is the applicant herein. In their counter-claim the defendant allege that the applicant herein was their advocate and advocate



for the other parties hence should account for the payment made to the 1st defendant in the counter claim through his firm. The applicants position is that the different forums namely High Court Civil Case No.402 of 2001 (O.S) and the Advocate Complaints Commission have resolved the dispute.

2. The 1st, 2nd, 4th, 5th and 6th defendants raised grounds of opposition that the application is an abuse of the process of the court and filed mala-fides with the intention of assisting the 2nd defendant in the counterclaim to escape his fiduciary and legal duty to account to the 1st, 2nd, 4th, 5th and 6th defendants and his duty to ensure that the transfers of land purchased by the 1st, 2nd, 4th, 5th and 6th defendants were processed expeditiously.
3. The suit filed by the 2nd defendant did not represent or resolve the claims by the 1st, 4th, 5th and 6th defendants to render a true and accurate account in regard to monies and documents deposited with the 2nd Defendant in the Counterclaim.
4. The advocates- Client relationship between the 2nd defendant in the counterclaim and the 1st, 4th, 5th and 6th defendants is a continuing trust that operates until the advocate renders a true account for all funds and documents deposited in his custody and the trust is not subject to the provisions of the *Limitation of Actions Act*.
5. The 2nd defendant in the counterclaim has not presented true accounts demanded by the 1st, 2nd, 4th, 5th and 6th defendants to the honorable court in this suit in discharge of this duty as an advocate.
6. The 1st and 2nd defendants in the counterclaim, acting jointly and severally, having received the full purchase price, have a duty to ensure that the terms of the Agreements for sale between the plaintiff and the 1st, 2nd, 4th, 5th and 6th defendants are enforced and parties respective obligations completed.
7. The 1st defendant to the counterclaim, as the chargee, had disputed the payments made to it by the 2nd defendant to the counterclaim resulting in delay in completing the transactions between the plaintiff as the vendor, the 1st defendant. In the counterclaim as charge, and the 1st, 2nd, 4th, 5th and 6th defendants in the counterclaim as purchasers.
8. I have considered the application and grounds of opposition and submissions on record and do find that the issues between the defendants to the suit and the 2nd defendants to the counter-claim cannot be determined in this forum as this will not lead to a determination as to title to the land. I do find the issues between the defendants and 2nd defendant to the Counter claim revolve on fiduciary duty and ought to be resolved by other forums such Advocate Complaints Commission or the High Court.

Section 13 of the *Environment and Land Court Act* provides: -

13. Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;



- (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.
- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) Deleted by Act No. 12 of 2012, Sch.
- (6) Deleted by Act No. 12 of 2012, Sch.
- (7) shall have power to make any order and grant any relief as the Court deems fit and just, including—
- (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;
 - (c) award of damages;
 - (d) compensation;
 - (e) specific performance;
 - (f) restitution;
 - (g) declaration; or
 - (h) costs.

Article 162(b) provides:

162. System of courts

- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - (b) the environment and the use and occupation of, and title to, land.

9. The dispute between the defendants and the defendants to counter claim does not fall within the purview of the above provisions. The addition of the 1st defendant to the counter claim introduces a new cause of action that this court has no jurisdiction to entertain. I do allow the application with costs to the applicant.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF JANUARY 2023.

A O OMBWAYO

JUDGE

