



**Gatanga Kwao Limited v Makindi Banks Limited (Environment & Land
Case 110 of 2020) [2023] KEELC 16745 (KLR) (28 February 2023) (Order)**

Neutral citation: [2023] KEELC 16745 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 110 OF 2020
BM EBOSO, J
FEBRUARY 28, 2023**

BETWEEN

GATANGA KWAO LIMITED PLAINTIFF

AND

MAKINDI BANKS LIMITED DEFENDANT

ORDER

1. Hearing of this suit proceeded exparte on 9/11/2022. Counsel for the plaintiff subsequently filed written submissions. The court reserved the case for Judgment today, 28/2/2023.
2. A perusal of the case file has revealed that the suit property is part of land that belonged to Samuru Gituto Farmers Co-operative Limited [hereinafter referred to as “the Society”]. Between 2006 and 2019, there were leadership wrangles in the Society, leading to a multiplicity of cases, all revolving around control of the Society’s land. The culmination of the cases was Court of Appeal [Nairobi] Civil Appeal No 300 of 2010 in which the Court of Appeal rendered a Judgment dated 22/3/2019. The Court of Appeal issued the following binding orders
 - (i) The Orders made by P. K. Kariuki, Esq. RM on 20th and 29th August, 2008, and the orders made by Mrs. L. W. Wachira, SRM, on 9th December, 2008 in CMCC 792/06, are declared a nullity and are hereby set aside. The proceedings in that case shall proceed in the manner and procedure prescribed by law.
 - (ii) As there are pending suits relating to transfers and alterations made in Land Parcel No. 10743 and the subdivisions made therein, prayers (ii) and (iii) made in the memorandum of appeal are not granted. The pending suits relating to the land shall proceed to hearing and determination in accordance with the law.



- (iii) Pending the hearing and determination of CMCC 792/06, and all pending suits relating to the land, the following orders issued by Nyamu, J. on 19th January 2009, as amended by this Court, shall remain in force and shall be registered against the Title(s) forthwith:

"1. That preservative and conservatory orders be and are hereby issued restraining:-

- (a) The 14th, 15th and 16th Respondents and or any other person from entering into any dealings affecting the Appellants' proprietary interests in L.R 10743 Thika measuring 301 acres, or any sub-division thereof, for the purposes of any transaction sale, charge or otherwise on the strength of the Orders made by Hon Karuiki, RM on 20th and 29th August, and Hon. L. Wachira (MRS) SRM on 9th December, 2008 in Chief Magistrates Court Thika in Civil Suit No. 792 of 2006 - Samuru Gituto Farmers Co-operative Society Limited – versus- John Mbau, Monica Wambui, Joseph Karumba, Hannah Marugu, Simon Ngugi Kamau, Paul Wanyoike, Joan Njeri, Boniface Mwana and Commissioner of Co-operative Development.
- (b) The Registrar of Titles from entertaining and or making of any entries affecting the appellants' proprietary interests in L. R. 10743 Thika measuring 301 acres, or any sub- division thereof, on the strength of the orders made by Hon. Kariuki, RM on 20th and 29th August, and Hon. L. Wachira (Mrs) SRM pm 9th December, 2008 in Chief Magistrates Court Thika in Civil Suit No. 792 of 2006 - Samuru Gituto Farmers Co-operative Society Limited versus John Mbau, Monica Wambui, Joseph Karumba, Hannah Marugu, Simon Ngugi Kamau, Paul Wanyoike, Joan Njeri, Boniface Mwana and Commissioner of Co-operative Development.

- (iv) The appellant shall have half the costs of this appeal and of the court below.

3. It has also emerged that there is a pending suit, to wit, Thika CMC E & L Case No 37 of 2015 in which Makindu Banks Ltd sued Samuru Gituto Farmers Co-operative Ltd, Nimken Enterprises Ltd and Gatanga Kwao Limited, seeking orders vesting the suit property in them. In their defence to the claim, the Society disowned the title held by Gatanga Kwao Ltd and termed it fraudulent. It is not clear why the plaintiff did not file a counterclaim in the said suit or why, upon filing this suit, they did not deem it necessary to apply for transfer and consolidation of the two suits. The result is that the Society has been left out of these proceedings yet this court is expected to pronounce itself on the ownership of the suit property. The Chief Magistrate Court is similarly expected to pronounce itself on the question of ownership of the suit property.



4. Taking the foregoing into account, it is the view of this court that the dispute in this suit cannot be effectually and completely adjudicated and settled in the absence of the Society or without a clear position regarding the disposal of the preceding suit which is pending in the Chief Magistrate Court.
5. Consequently, the court makes the following orders:
 - a. The order reserving a date for judgment in this suit is hereby vacated.
 - b. The plaintiff shall amend the plaint and join Samuru Gituto Farmers Co-operative Ltd as a defendant in this suit and shall serve them.
6. This case will be given a mention date when the parties will attend and address the court on the way forward, taking into account the fact that there subsists a prior suit relating to the same subject matter and involving the same parties and the same issues. The court will thereafter issue appropriate directions.
7. The Court Registry shall extract this order and email it to all the parties concerned.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 28TH DAY OF FEBRUARY 2023

B M EBOSO

JUDGE

Court Assistant: Ms Osodo

