



Ondieki (Suing as Heir and Legal Administrator of the Estate of Kerubo Ondieki - Deceased) v Ndege (Environment and Land Appeal E016 of 2022) [2023] KEELC 16540 (KLR) (28 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16540 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E016 OF 2022**

**JM KAMAU, J
MARCH 28, 2023**

BETWEEN

ZEPHANIAH NYAKERIGA ONDIEKI (SUING AS HEIR AND LEGAL ADMINISTRATOR OF THE ESTATE OF KERUBO ONDIEKI - DECEASED) APPELLANT

AND

CHARLES ONDIEKI NDEGE RESPONDENT

(Being an Appeal from the Ruling of the Magistrate’s Court at Nyamira by Hon. W.K. Chepseba – PM delivered on the 17th day of November, 2022 in Nyamira CMC ELC Case No. 43 of 2007)

RULING

1. Before me is an Application dated March 8, 2023 wherein the Appellant seeks for orders that pending the Hearing and determination of this Appeal, the proceedings in Nyamira CMCC ELC No 43 of 2007 be stayed. The main ground advanced in support of the said Application is that: -

“parties whose properties were not part of the original case have been included after Judgment has been pronounced by the lower court”.
2. In the Supporting Affidavit of one Charles Ondieki Ndege, the Appellant herein, who is the Defendant in the lower court, sworn on March 8, 2023 he depones that the Learned Chief Magistrate has wrongly reopened the concluded matter and improperly included parties who were not in the suit after the said suit had been determined. He would want proceedings in the said suit stayed as he pursues an Appeal against the reopening of the suit and the inclusion of new parties. He opines that should the stay orders not be granted and the Appeal herein succeeds, then the outcome of the said appeal will not serve any useful purpose.



3. The Respondent has opposed the said Application on the ground that the proceedings in Nyamira CMCC ELC No 43 of 2007 were concluded on November 17, 2022 and the said orders are the subject of the Appeal. I allowed the parties to canvass the Application by way of oral submissions which submissions I have judiciously considered.
4. From the onset, I must state that I am constrained not to go deep into this matter since by so doing I will be pre-empting outcome of the pending Appeal. All that I need to do is to look at the Grounds of Appeal and juxtapose them on the orders, the subject of this Appeal and the earlier Judgment and then decide whether the case should proceed as we finalize this Appeal.
5. On November 18, 2008 Judgment was pronounced in Nyamira CMCC No 43 of 2007 in the following terms:
 - (a) An order of Rectification do and is hereby issued rectifying the Register in respect of LR No Kisii/Mugirango/Bokeira 1/1065 showing that a ¼ share of it be and is hereby owned by the Plaintiff herein.
 - (b) A permanent injunction be and is hereby issued restraining the Defendant from by himself, his heirs, agents, servants and/or anyone claiming a ¼ share of Kisii/Mugirango/Bokeira/1065 interfering with the Plaintiff peaceful enjoyment and/or possession thereof.
6. On September 12, 2013 the court was moved by the Decree Holder to have the execution of the above Decree given effect by way of the Executive Officer of the court executing the relevant transfer documents on behalf of the “Decree Holder”, who had declined to do so. The same was opposed by the Appellant herein vide grounds of opposition dated November 10, 2013. A similar Application dated February 7, 2014 was filed in court on February 12, 2014 word for word. The same was amended on March 12, 2014 to rectify who the Executive Officer should sign the transfer forms on behalf of - the Judgment Debtor and not the Decree Holder. The same was filed in court on April 16, 2014. It was granted on September 22, 2015 in the following phraseology:

It Is Hereby Ordered:

7. That the Land Registrar by (sic) Nyamira County do cause to be registered in the names of Zephaniah Nyakorega Ondieki ¼ (a quarter) share out of Land Title No Kisii/North Mugirango/Bokeira 1/2679 which resulted from original Title No Kisii/North Mugirango/Bokeira 1/1065.
8. The Ruling was made by Honourable EK Nyutu, Principal Magistrate.
9. On June 26, 2018, the Respondent herein moved the court this time for orders that the Executive Officer of the court do execute all the transfer documents to enable him get his ¼ share of parcel No North Mugirango/Bokeira 1/2679 like the forms for Applications for Land Control Board, Transfer of land and mutation. The same was granted on August 14, 2018 by the Honorable Margaret Wambani, Chief Magistrate.
10. On August 12, 2021 the Respondent filed another Application dated August 12, 2021 this time seeking that Jane Mokeira Osora, Imelda Bochaberi Onyanda, Peter Ogirion Ogowoi and Benson Omayo Minyira be joined in the suit for purposes of an Application seeking a Declaration that the sub-division of LR No North Mugirango/Bokeira/1064 into LR Nos North Mugirango/Bokeira/2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2681 and 2688 by the Judgment Debtor during the pending of the suit was null and void. He also sought an inhibition directed against any dealings, transactions and/or disposition relating to the above sub-divisions.



11. The same was granted by Honourable Margaret Wambani on August 17, 2021 in the following terms:
- “ 1. There be and is hereby granted an Inhibition, directed to and/or against any dealings, transaction and/or disposition, relating and/or concerning transactions in respect of LR No’s North Mugirango/ Bokeira/ 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687 and 2688 pending the hearing and determination of the instant Application.
 2. Jane Mokeira Osero, Imelda Bochaberi Onyanda, Peter Ogero Ogendi, Benson Omayo Minyira, be and are hereby enjoined in the suit herein for purposes of Hearing and determination of the instant Application only”.
12. On February 17, 2022 one Monica Omambia Nyaboke also applied to the court to be joined as an interested party in the suit on the ground that she had also bought a piece of land from the Appellant’s father in 1976 and which was registered as North Mugirango /Bokeira/2686 in the names of Imeldah Bochabori Onyanda, her Daughter in law which the latter had unlawfully had registered in her name.
13. On December 15, 2022 the Chief Magistrate, Honourable Chepseba gave an order in respect of the 2 Applications both of which had been brought by way of Notice of Motion dated June 21, 2021 and February 27, 2022 respectively.
14. What is not clear from the court records is whether the said orders have been executed or not. There is no evidence of execution.
15. It is important that any further proceedings in CMCC ELC No 41 of 2007 Nyamira be stayed until the Hearing of the Appeal herein in order to give efficacy to the outcome of the Appeal.
16. In the premises, I order that the proceedings and execution of all the orders before the Chief Magistrate Nyamira in CMCC No 43 of 2007 be stayed until the hearing of this Appeal. On the flip side, should the Title Deeds that resulted from LR No Kisii/North Mugirango/Bokeira 1/1065 inopportunistically change hands, it would make this matter murkier. Correspondingly, the Appellant herein is ordered to deposit all the Title Deeds resultant from LR No Kisii/North Mugirango/Bokeira 1/1065 in court within 15 Days of this Order.
17. This Appeal shall be heard within the next 30 Days from today.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 28TH DAY OF MARCH 2023.

MUGO KAMAU

JUDGE

In the Presence of:

Sibota – Court Assistant

Mr. Masese for the Appellant

Ms. Ochwal for the Respondent

