



Bichage v Isaac & 4 others (Environment and Land Civil Miscellaneous Application 12 of 2022) [2023] KEELC 16548 (KLR) (23 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16548 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION 12 OF 2022**

**M SILA, J
MARCH 23, 2023**

BETWEEN

FRANCIS MOGERE BICHAGE APPLICANT

AND

TOM NYAMOTE ISAAC 1ST DEFENDANT

MONICA OBONYO ISAAC 2ND DEFENDANT

NYABOKE KERONGOSI 3RD DEFENDANT

KISII COUNTY LAND REGISTRAR 4TH DEFENDANT

AND

KISII COUNTY SURVEYOR RESPONDENT

RULING

1. What is before me is a Miscellaneous Notice of Motion application dated October 13, 2022 and filed on October 17, 2022. The application seeks an order that the Kisii County Land Registrar and Kisii County Surveyor do amend the Registry Index Map (RIM) for the land parcels Nyaribari Chache/BB/Boburia/8496, 8569, and 10576. The application is based on the ground that the applicant is owner of the land parcel Nyaribari Chache/BB/Boburia/ 8496 whereas the 1st to 3rd respondents are respectively the registered owners of the land parcels Nyaribari Chache/BB/Boburia/8493, 10576 and 8569; that the current RIM does not reflect the parcels of land as they exist on the ground; that the survey records (previous mutations and map) does not correspond to the current occupation on the ground; that the RIM be amended to reflect the parcels as they exist on the ground.
2. The application is supported by the affidavit of the applicant. He avers that he acquired his land parcel No 8496 from the 1st respondent. He then filed the suit Kisii ELC Miscellaneous Application No 1 of 2020 where he sought various orders including the order for the Land Registrar and Surveyor Kisii



County, to visit the parcels of land mentioned herein and determine and/or fix their boundaries as they exist on the ground. He avers that the order was issued and the officers visited the land on March 27, 2021 and presented a report which was filed in court on November 8, 2021. He avers that the report revealed a land parcel No 8569 which by then was not known, and further, that the report revealed that the land parcel No 10576 resulted from a subdivision of the parcel No 8492. He states that the current occupation on the ground does not correspond to these records. He deposes that with the help of the respective owners and or their representatives, and with the help of the area chief, all the parcels of land were picked on the ground as they exist and were plotted as they currently exist on the ground with their approximate areas shown. He states that the RIM has errors which he now seeks to amend pursuant to the County Surveyor's report of June 14, 2021. He claims that there is no dispute between the proprietors over the acreages or boundaries of their respective parcels of land after the same were fixed by the County Surveyor on March 27, 2021 and the problem is only with the RIM.

3. Nothing was filed in reply to the motion and I have given it due consideration.
4. The applicant and his neighbours appear to have some boundary issues. The applicant himself deposes that he filed the suit Kisii ELC Miscellaneous Application No 1 of 2020. He has annexed an order given on November 30, 2020 in that suit, whereupon the court issued an order directing the Kisii County Land Registrar and Surveyor to visit the land parcels Nyaribari Chache/BB/Boburia/8493, 8496 and 10576 and determine or fix boundaries between the parcels as they currently exist on the ground. Pursuant to that order, a report dated June 14, 2021 was filed. The applicant does not say what happened and what orders were issued after this report was filed.
5. I was at a loss as to why the applicant is filing another miscellaneous application, and when the matter came before me for hearing on February 21, 2023, I inquired from Mr Maswari, learned counsel for the applicant, why the applicant has not filed this application within the previous suit. I was not given a satisfactory answer, only informed that the other suit was closed. I was never informed upon what orders it was closed.
6. I am afraid I cannot entertain this application. If the applicant has an order issued in another matter, and wishes to execute that order, then the proper avenue is to file the application within the suit where the order was issued, not file a fresh matter. To do so will only confound issues and put the court at risk of issuing conflicting orders and such action is indeed barred by Section 34 of the Civil Procedure Act, which provides as follows:

34 (1): All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
7. It is clear to me that at issue is the order made on November 30, 2020 within the suit Kisii ELC Miscellaneous Application No 01 of 2020. The applicant therefore ought to have filed this application within that suit.
8. I find this fresh cause to be incompetent and it is hereby struck out. I make no orders as to costs since nothing was filed to oppose it.
9. Orders accordingly.

DATED AND DELIVERED THIS 23 DAY OF MARCH 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT



AT KISII

