



Mbugua (Suing as a representative of the Estate of the Late Mbugua Thuo) v Land Registrar, Nakuru; Muhoro & 15 others (Interested Parties) (Environment & Land Case 117 of 2019) [2023] KEELC 16478 (KLR) (22 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16478 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 117 OF 2019
FM NJOROGE, J
MARCH 22, 2023
(FORMERLY NAKURU HC CIVIL SUIT NO 233 OF 2006)

BETWEEN

ELIUD NGUGI MBUGUA (SUING AS A REPRESENTATIVE OF THE ESTATE OF THE LATE MBUGUA THUO) APPLICANT

AND

LAND REGISTRAR, NAKURU RESPONDENT

AND

JOSEPHAT MWANGI MUHORO INTERESTED PARTY
SAMUEL NJOGU MUNGAI INTERESTED PARTY
JOSEPH MWEMA NGANGA INTERESTED PARTY
CHRISTOPHER KARIUKI KAMAU INTERESTED PARTY
WANJIKU GATHORONJO INTERESTED PARTY
JACKSON MIRINGU KAMAU INTERESTED PARTY
DORIS NYAIRURI NJIRI INTERESTED PARTY
FRANCIS NGUGI MUNGAI INTERESTED PARTY
DELIVERANCE CHURCH (SUED THROUGH ITS REGISTERED TRUSTEES) INTERESTED PARTY
TAYARI FARMERS CO LTD INTERESTED PARTY
JOSEPH KIRAGU MURAYA INTERESTED PARTY
MARY MUTHONI KARIUKI INTERESTED PARTY
ESTHER WANGARE NDEGWA INTERESTED PARTY



CHARITY NJERI MWANGI INTERESTED PARTY
MICHAEL WAWERU MWANGI INTERESTED PARTY
THE REGISTERED TRUSTEES MOLO STREET CHILDREN
PROJECT INTERESTED PARTY

RULING

1. This is a ruling in respect of the Plaintiff's Notice of Motion dated February 7, 2023 which seeks the following orders:-
 - a. Spent.
 - b. That the Registrar of Lands Nakuru be compelled to provide the current register of land parcel numbers Mau Summit/Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1603, 1604, 1594, 1593, 1592, 1591, 1590, 1889, 1588, 1587, 1381, 1380, 1379 1322, 1585, 1584, 1583, 1582, 1581, 1580, 1579, 1578, 1577, 1586.
 - c. That the court do issue an order of restriction against the parcel numbers Mau Summit/Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1603, 1604, 1594, 1593, 1592, 1591, 1590, 1889, 1588, 1587, 1381, 1380, 1379 1322, 1585, 1584, 1583, 1582, 1581, 1580, 1579, 1578, 1577, 1586, either from the alleged owners, themselves, their agents, assignees or any other persons working under their instructions until the matter is heard and determined.
 - d. That the costs of this application be in the cause.
2. The application is supported by the affidavit sworn by Eliud Ngugi Mbugua. He deposed that the subdivisions are from the Applicant's land parcel Number Mau Summit/Molo Block 625 (Tayari) and Mau/Summit Molo Block 626 (Tayari); that by this court's order issued on 30/05/2018 the Respondent was ordered to proceed to the ground, identify parcel numbers Mau Summit Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1603, 1160, 1403 and 625 and 626 Tayari; that on June 29, 2018 the Ministry of Land and Physical Planning wrote to the Chief, Molo Tayari Area informing the Area Chief of their visit to the disputed suit land; that the Land Registrar and Surveyor went to the ground and did a joint report dated July 5, 2018; that the Land Registrar made his findings on some of the disputed lands which report is part of the documents to be adduced in the substantive hearing; that it is necessary for the Land Registrar to assist this court with information on the current status of the said parcels, their current owners and determining whether to go to full hearing or add other Defendants or removing some; that an attempt to get relevant information on the said parcels through his advocates vide a letter dated January 27, 2023 was declined without acknowledgment hence the instant application; that the Applicant will suffer irreparable harm should the court not issue the order prohibiting any activities on the said parcels as the alleged owners might dispose them pending final determination of the suit.

Response

3. In opposing the application, the respondent filed its grounds of opposition dated February 22, 2023 and raised the following grounds:
 1. That the Application is fatally incompetent and incurably defective.



2. The Applicant has not demonstrated that they made an application and paid the requisite statutory fee as provided for under Section 7(2) of the [Land Registration Act, 2012](#) No 3 of 2012. A letter to the Land Registrar does not suffice.
3. The Applicant is guilty of non-disclosure of material facts. The Land Registrar is not a party in ELC No 117/2019, was not a party in Nakuru High Court Civil Suit 233 of 2006. None of the pleadings have been served upon the Land Registrar and thus not privy to the issues in the matter.
4. That the Application is full of glaring conjectures and unsubstantiated allegations against the Land Registrar. That is to say that the Applicant has failed to demonstrate to the required degree of precision that the Land Registrar has failed and or refused to act as per his legal mandate.
5. The Application is thus an abuse of court process and should therefore be dismissed with costs.

Submissions

4. The Applicant filed his submissions dated February 28, 2023 on the same day where he reiterated the contents of his supporting affidavit to the present application.
5. He submitted that the Respondent is the custodian of the information that needs to be availed to the public upon request by any person and pursuant to paying of the requisite fees. He submitted that at no point did they refuse or asked to pay any amount in fees.
6. The Applicant relied on the case of [Charles Omanga & 8 others v Attorney General and another](#) [2004] eKLR and submitted that it is trite law that before an applicant seeks orders from the court compelling the Respondent to give access to certain information, he must show that the said information was requested for. He added that a letter dated January 27, 2023 was sent to the Respondent and he ought to have replied with details as to the requisite amount to be paid so that they could pay and be given the information sought. That the Respondent never acknowledged the letter.
7. In conclusion, he submitted that the Applicant stands to suffer irreparable harm should the court not issue the order prohibiting any activities on the said parcels of land and also order the Respondent to provide information on the current status of the parcels.


Analysis and Determination

8. After considering the Application, grounds of opposition and submissions the only issue that arises for determination is whether the applicant's application dated February 7, 2023 has merit.
9. The applicant has sought that the Land Registrar Nakuru be compelled to provide the current register of land parcel No's Mau Summit/Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1603, 1604, 1594, 1593, 1592, 1591, 1590, 1589, 1588, 1587, 1381, 1380, 1379, 1322, 1584, 1583, 1582, 1581, 1580, 1579, 1578, 1577, 1586 which he alleges are subdivisions of his parcels of land No's 625 and 626(Tayari). The applicant is also seeking that the court issues an order of restriction on the said parcels of land until the matter is heard and determined.
10. The respondent opposed the granting of the said orders and stated that the applicant did not demonstrate that he made an application and paid the requisite fee as provided for Section 76(1) of the [Land Registration Act](#).



11. As pointed out before, the grounds on the face of the application and the supporting affidavit are that the court had given an order issued on May 30, 2018 which required the Land Registrar to proceed to the ground and identify land parcel No's Mau Summit Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1160, 1403, 625 and 626 Tayari. Attached to the applicants supporting affidavit is a copy of the said order. The District Surveyor and Land Registrar filed their joint report dated 5/07/2018 where they observed that in reference to sheet number 2 for Mau Summit/Molo Block 7 (Tayari), the plot numbers 625 and 626 were redrawn/resurveyed and changed to include 28 parcels. They confirmed that parcel numbers Mau Summit/Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603 and 1604 were among the plots that were created out of the former plots 625 and 626.
12. They went on to state that plot No 625 Tayari if inserted on the Registered Index Map would replace the following parcels of land: - Mau Summit/Molo Block 7/1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590 and part of 1591. They further stated that plot number 626 Tayari if inserted on the Registered Index Map would replace parcel No's Mau Summit/Molo Block 7(1591 part of it), 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601 (part of 1603) and 1604.
13. It is on this basis that the applicant is seeking that the Land Registrar be compelled to produce the current land registers of the said parcels of land that the Land Registrar and District Surveyor had identified in their joint report dated July 5, 2018 as having emanated from plot numbers Mau Summit/Molo Block 625 and 626 (Tayari). He alleges that the said information will assist him in determining if he will proceed with the suit as it is or if there will be need to add more defendants. I find this to be a very reasonable approach to this litigation.
14. Since the applicant is claiming ownership of land parcel No's Mau Summit/Molo Block 625 and 626 (Tayari) which as per the joint report of the Land Registrar and the District Surveyor, has been subdivided into the various parcels of land whose numbers are enumerated above, it is my view that the applicant has laid a proper basis for the granting of the orders sought in his application dated February 7, 2023, and I therefore grant that application in terms of prayers Nos 2, 3 and 4 thereof.
15. Certified copies of the said documents shall be filed by the Land Registrar in this file record within 14 days of this order. The applicant shall serve this order forthwith and file an affidavit of service to demonstrate compliance.
16. The suit shall be mentioned on April 26, 2023 for further directions.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 22ND DAY OF MARCH 2023.



MWANGI NJOROGE
JUDGE, ELC, NAKURU

