



Munoru v Uwezo Microfinance Bank Limited & another (Environment & Land Case 739 of 2017) [2023] KEELC 16771 (KLR) (21 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16771 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 739 OF 2017
BM EBOSO, J
MARCH 21, 2023**

BETWEEN

JANE NYOKABI MUNORU PLAINTIFF

AND

UWEZO MICROFINANCE BANK LIMITED 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

RULING

1. On February 3, 2022, this court rendered a judgment in this suit in favour of the plaintiff. The court issued the following disposal orders:
 - a. A declaration is hereby made that the loan guarantee executed on November 4, 2016 and the charge and/or the restriction registered as entry number (1) on November 29, 2016 in the encumbrances section of the land register relating to title number Limuru/ Kamirithu/4617 in favour of the 1st defendant, Uwezo Microfinance Bank Limited, was procured fraudulently and are therefore null and void.
 - b. An order is hereby issued directing the relevant Land Registrar to rectify the Land Register relating to Limuru/Kamirithu/4617 by cancelling/ removing the entry relating to the said charge and/or restriction.
 - c. The 1st defendant shall pay the plaintiff general damages of Kshs 500,000.
 - d. The 1st defendant shall bear the plaintiff's costs of this suit.
 - e. There shall be no award of costs in relation to the 2nd defendant.
2. Seven months subsequent to that, the plaintiff brought a notice of motion dated September 19, 2022, asking this court to order the Land Registrar to reconstruct the land register relating to the suit



property, to facilitate registration of the decree of the court in the land register. The application was supported by the plaintiff's affidavit sworn on September 19, 2022. It was the case of the plaintiff that the Land Registrar had failed to register the decree of the court in the relevant land register on the ground that he could not trace the relevant land register in the Lands Registry.

3. The 1st defendant opposed the application through grounds of opposition dated October 24, 2022 in which they contended that the application was a non-starter and untenable in law; that this court lacked jurisdiction to issue the orders sought in the application; and that the application was frivolous, vexatious, misconceived, mischievous and an abuse of the court process.
4. The application was subsequently amended on November 4, 2022, to correct what the plaintiff's advocate described as typographical errors relating to the name of the plaintiff and to the relevant Land Registry.
5. Canvassing the application in the virtual court on November 3, 2022 and November 24, 2022, Mr Muthomi, counsel for the plaintiff, argued that the application was a motion relating to enforcement of the judgment of the court, adding that the court was clothed with jurisdiction to enforce its judgments. Counsel argued that the land register was the platform on which the judgment of the court was to be enforced, and that without the relevant Land Register, the judgment of the court could not be enforced.
6. Ms Muthiani, counsel for the 1st defendant, argued that this court having rendered a judgment in this suit, it was functus officio. Counsel added that the applicant had not demonstrated the steps she had taken to enforce the judgment. Counsel argued that section 33 of the [Land Registration Act](#) contained a clear procedure on reconstruction of land registers, adding that the plaintiff had ignored the said procedure. Counsel argued that the jurisdiction of this court could not be invoked in the exercise of the Land Registrar's statutory duty unless it is demonstrated that the Land Registrar has deliberately failed to perform his duty. Counsel argued that the plaintiff should have applied to have the Land Registrar summoned to court. Counsel urged the court to dismiss the application.
7. The court has considered the application, the response to the application, the parties' respective submissions, the relevant legal frameworks and the relevant jurisprudence on the key question in the application. The single question to be answered in this application is whether the plaintiff has demonstrated a proper basis for the intervention of this court in the enforcement of its judgment dated February 3, 2022.
8. It is observed from paragraph 3 of the plaint that the Land Registrar was sued in this suit through the Attorney General. Put differently, through the Attorney General, the Land Registrar was sued as the 2nd defendant in this suit. Secondly, under section 9 of the [Land Registration Act](#), the Land Registrar is obligated to maintain all registers relating to land in a secure, accessible and reliable format. Thirdly, under section 33 (5) of the [Land Registration Act](#), the Land Registrar is vested with powers to reconstruct any lost or destroyed land register after making such enquiries as may be necessary and after giving due notice of sixty days in the Kenya Gazette.
9. The plaintiff swore an affidavit in which she deposed that she booked the decree of this court for registration by the Land Registrar and that the decree was returned to her unregistered on the ground that the relevant land register was missing. She exhibited form LRA 9 indicating that the decree was booked for registration on March 31, 2022. Despite being privy to this suit through the Attorney General, the Land Registrar elected to say nothing about the present application or about any challenges he may have faced in complying with the decree of this court. There is no stay order either by this court or by the Court of Appeal.



10. In the above circumstances, this court is satisfied that there is a proper basis for invoking the jurisdiction of this court to compel the Land Registrar to reconstruct the land register relating to the suit property, to facilitate registration and enforcement of the decree of this court.
11. The result is that the notice of motion dated September 19, 2022 and amended on November 4, 2022 is allowed in terms of prayers 2, 3 and 4. The Land Registrar shall complete the process of reconstructing the land register within 120 days from the date of service of this order on him. The plaintiff shall bear costs of publishing the requisite notice in the Kenya Gazette. Costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 21ST DAY OF MARCH 2023

B M EBOSO

JUDGE

Mr. Muthomi for the for the Plaintiff

Court Assistant: Osodo

