



**Asanyo & another v Chief Land Registrar & 2 others; Twala & another (Interested Parties)
(Miscellaneous Application 2 of 2022) [2023] KEELC 16987 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16987 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
MISCELLANEOUS APPLICATION 2 OF 2022**

EM WASHE, J

APRIL 25, 2023

BETWEEN

GEOFFREY MAKANA ASANYO 1ST APPLICANT

INTONA INVESTMENT LIMITED 2ND APPLICANT

AND

THE CHIEF LAND REGISTRAR 1ST RESPONDENT

THE DIRECTOR OF SURVEY 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

AND

RICHARD TWALA INTERESTED PARTY

ALLAN LEMAIYIAN TWALA INTERESTED PARTY

RULING

1. The interested party (hereinafter referred as “the applicant”) filed a notice of motion application dated June 8, 2022 (hereinafter referred to as “the present application”) seeking for the following orders; -
 - i. That this application be certified urgent and the same be heard in the first instance on priority basis and service thereof be dispensed with in the first stance for reasons of urgency;
 - ii. That pending the inter-parte hearing and determination of the application, this honourable court be pleased to issue a stay of execution of the orders issued on the February 23, 2022 and May 16, 2022.



- iii. That this honourable court be pleased to enjoin the intended interested party or in such other capacity as the Honourable Court may deem fit and the law firm of Njeri Anne Kamau Associates, Advocates be granted leave to represent him.
 - iv. That the honourable court be pleased to vacate or set-aside the orders issued on the February 23, 2022 and subsequently reviewed on the May 16, 2022.
 - v. That the honourable court do grant any other or further orders that may favour the cause of justice.
 - vi. That costs of this application be provided for.
2. The prayers hereinabove are based on various grounds outlined in the present application and further expounded by the Affidavit of the applicant sworn on the June 8, 2022.
 3. The grounds presented by the applicant can be summarised as follows; -
 - a. The applicant is the registered owner of the property known as LR No 10 which neighbours the 1st and 2nd respondents' property known as LR No 5.
 - b. This Honourable Court on the February 23, 2022 issued orders requiring the District Surveyor, Transmara East, West and South to visit the property known as LR No 5 and place the actual boundaries thereof in accordance to the mutation forms.
 - c. The applicant herein came to be aware of the said orders issued on the February 23, 2022 after receiving an invitation from the office of the Sub-County Land Registrar Transmara to attend and/or comment on the survey exercise.
 - d. The orders issued on the February 23, 2022 by this honourable court have far reaching consequences upon the applicant and the same were issued in his absentia and to his detriment.
 - e. The applicant further stated that there is a real risk that the survey exercise would affect the delineations of his property known as LR No 10 without giving him an opportunity to present his side of the story and/or result to him being deprived of his property in contravention of article 40 of the Kenyan *Constitution, 2010*.
 - f. The applicant further stated that the 1st and 2nd applicants in the main application should have invoked the provisions of section 18 of the *Land Registration Act*, No 19 of 2012 first before filing this action.
 - g. Consequently therefore, this honourable court did not have any jurisdiction to entertain and/or make any orders as appertains the proceedings filed by the 1st and 2nd applicants thereof.
 - h. In conclusion, the interested party/applicant sought the proceedings instituted by the 1st and 2nd applicants/respondents to be struck out and the orders issued on the February 23, 2022 set-aside.
 4. The present application was then served on the 1st and 2nd applicants/respondents who opposed it by filing a replying affidavit sworn by the 1st applicant/respondent on the January 23, 2023.
 5. The 1st and 2nd applicants/respondents opposed the interested party/applicants present application on the following grounds; -
 - a. The entire application by the 1st interested party/applicant was overtaken by events thereof.



- b. The 1st interested party/applicant had not placed any evidence or documentary evidence to support the orders sought in this present application.
 - c. The 1st and 2nd applicants/respondents stated that the orders issued by this honourable court on the February 23, 2022 were fully implemented with the knowledge of the 1st interested party/applicant who despite knowledge of the exercise failed to turn up and participate in the process.
 - d. Further to that, the 1st and 2nd applicants/respondents pointed out that the 1st interested party/applicant had not shown how the implementation of the orders issued on the February 23, 2022 would infringe on his proprietary rights.
 - e. In conclusion therefore, the 1st and 2nd applicants/respondents sought the court to dismiss the present application as it lacked merit.
6. The parties were then directed to file their written submissions which was duly done.
7. The court upon perusing the present application, the replying affidavit and the submissions by the parties, the issues for determination can be identified as follows; -

Issue No 1-

Does the court have jurisdiction to entertain & determine the Misc Application dated September 4, 2020?

Issue No 2-

Is the joinder of the 1st and 2nd interested parties merited?

Issue No 3-

Is the prayer seeking stay of execution of the orders issued on the February 23, 2022 pending the inter-parte hearing and determination of this application merited?

Issue No 4-

Is the prayer seeking for the setting aside and/or vacating of the orders issued on the February 23, 2022 merited?

Issue No 5-

Who bears the costs of the present application?

8. The honourable court having identified these core issues for determination, the same will now be analysed and determined as outlined hereinbelow.

Issue No. 1- Does The court have jurisdiction to entertain & determine the misc.application dated September 4, 2020?

9. The first issue for determination is whether this honourable court is seized of jurisdiction to entertain the Miscellaneous application dated September 4, 2020.
10. The 1st interested party/applicant's submission is that the 1st and 2nd applicants/respondents failed to comply with the provisions of section 18 of the *Land Registration Act*, No 19 of 2011.



11. The 1st Interested Party/Applicant's position is that any dispute regarding boundaries should first be submitted to the Land Registrar in charge of where the properties in dispute are located for hearing and determination.
12. In this instant suit, the 1st and 2nd applicants/respondents did not follow this procedure provided for under section 18 of the Land Registration Act, No 19 of 2011 and therefore the court was not seized with jurisdiction to hear and/or make any determination regarding the application dated September 4, 2022.
13. Unfortunately, the 1st and 2nd applicants/respondents did not make any response to this issue in the replying affidavit sworn on the January 23, 2023.
14. It is important to point out that this is the second ruling in this matter with the first one having been pronounced on the September 21, 2022.
15. The ruling pronounced on the September 21, 2022 was necessitated by a preliminary objection dated June 28, 2022 filed by the 2nd Interested Party herein who is the registered owner of the property known as LR No 11.
16. The 2nd interested party in the earlier preliminary objection dated June 28, 2022 had raised a similar issue of jurisdiction of this honourable court as that now raised by the 1st interested party/applicant.
17. In the honourable court's ruling pronounced on September 21, 2022, paragraph 37,38,39 and 40 resolved the issue of jurisdiction of this court.
18. For avoidance of doubt, paragraph 40 of the ruling pronounced on the September 21, 2022 provided as follows; -

“In essence therefore, in the absence of any notable boundary dispute either in the preliminary objection and/or identified in the submissions of the 2nd interested party/applicant, the court is of the view that it has the jurisdiction to make directions in the present application under section 3A of the Civil Procedure Act, cap 21 laws of Kenya, as well as section 13 (1) (2) and (3) of the Environment and Land Court Act, No 19 of 2011.”

19. The honourable court's ruling pronounced on the September 21, 2022 is still alive and binding on the parties herein, and the issue of jurisdiction is a non-issue for determination in this present application.

Issue no. 2- is the joinder of the 1st and 2nd interested parties merited?

20. The second issue was the joinder of the 1st proposed interested party known as Richard Twala.
21. According to the Court proceedings undertaken on the June 21, 2022, the Court through its ruling dated June 21, 2022 allowed the joinder of the 1st interested party/applicant herein.
22. Consequently therefore, this prayer is spent pursuant to the ruling of the honourable court pronounced on the June 21, 2022.

Issue No. 3- Is the prayer seeking stay of execution of the orders issued on the 23rd of february 2022 pending the inter-partes hearing and determination of this application merited?

23. The third issue is whether or not the orders issued by this Honourable Court on the February 23, 2022 can be stayed pending the hearing and determination of the present application.



24. On this issue, the honourable court in its ruling pronounced on the September 21, 2022 and in particular paragraph 41 and 42 stated as follows; -

“ 41. Lastly, the Court would like to draw the attention of all the parties (including the 1st and 2nd Interested Parties) in this Application that its orders of 23rd February 2022 have been fully implemented as both the Sub-County Land Registrar and the Sub-County Land Surveyor have presented their report dated 30th June 2022 on the 8th of July 2022.”

42. Each party is invited to collect a copy from the offices of the Deputy Registrar of the Environment & Land Court for their consumption and further action.”

25. Consequently therefore, the 1st interested party/applicant’s prayer that the orders of this honourable court issued on the February 23, 2022 be stayed has been overtaken by events and can not be granted as prayed.

Issue No. 4- Is the prayer seeking for the setting aside and/or vacating of the orders issued on the 23rd of february 2022 merited?

26. Similarly, the 1st interested party/applicant prayer seeking this honourable court to set-aside and/or vacate its ruling pronounced on the February 23, 2022 cannot also be issued as the said exercise of placing the boundary markings was completed and an appropriate report filed on the June 30, 2022.

27. The order being sought by the 1st interested party/applicant in the present application is therefore an order in vain and this honourable court cannot issue such orders.

28. In addition to that, the 1st interested party/applicant has not placed before the Court any complaint of interference and/or alteration of his property known as LR No 10 since the boundary markings were placed by the Sub-County Land Registrar and/or the Sub-County Land Surveyor way back on June 16, 2022.

29. Consequently, this honourable court does not find any reason whatsoever to set-aside and/or vacate its orders issued on the February 23, 2022 as prayed in the present application.

Issue No. 5- Who bears the costs of the present application?

30. The last issue is who should bear the costs of the present application.

31. It is settled law that costs usually follow the outcome of the application and/or suit.

32. In this present application, the 1st interested party/applicant prayers have been denied.

33. In essence, the costs of the present application shall be borne by the 1st interested party/applicant.

Conclusion.

34. In conclusion, the honourable court hereby makes the following orders as appertains the application dated June 8, 2022; -

a. The notice of motion application dated June 8, 2022 be and is hereby dismissed.

b. The 1st interested party/applicant shall bear the costs of this application only to the 1st and 2nd applicants/respondents.



DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 25TH APRIL, 2023.

EMMANUEL M WASHE

JUDGE

In The Presence Of:

Court Assistant: Ngeno/mempe

Advocate for the Applicant: Muiruri For 1st & 2nd Respondents

Advocate for the Respondent: Moraa For Tuya For The 1st Interested Party

N/a 1st Interested Party/applicant

