



Muhamudo & another v Mohamed & 9 others (Environment & Land Case 35 of 2019) [2023] KEELC 16883 (KLR) (19 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16883 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 35 OF 2019**

**CK NZILI, J
APRIL 19, 2023**

BETWEEN

FATUMA GATITU MUHAMUDO 1ST PLAINTIFF

ZUBERI ABDALLA HASSAN 2ND PLAINTIFF

AND

HAWO MOHAMED 1ST INTERESTED PARTY

HUSSEIN JUMA YUSUF 2ND INTERESTED PARTY

MALIWAZA JUMA YUSUF 3RD INTERESTED PARTY

ASHA JUMA YUSUF 4TH INTERESTED PARTY

YUSUF JUMA YUSUF 5TH INTERESTED PARTY

MWANAISHA JUMA YUSUF 6TH INTERESTED PARTY

MUNIRA JUMA YUSUF 7TH INTERESTED PARTY

MOHAMED JUMA YUSUF 8TH INTERESTED PARTY

ZUHURA JUMA YUSUF 9TH INTERESTED PARTY

ABDUL JUMA YUSUF 10TH INTERESTED PARTY

RULING

1. This ruling relates to two applications dated January 16, 2023 and January 18, 2023, hereinafter the 1st & 2nd application respectively. In the 1st application, the court is asked to review or set aside and reinstate for hearing an application dated November 8, 2022, on the grounds that there was a mistake by counsel intending to come on record for the applicants, who was unwell; the applicants are likely



to lose their land; the applications were not opposed by the respondents and that there is need for substantive justice to prevail.

2. In support of the 1st application, Charles Omari advocate has sworn an undated affidavit explaining that the intended interested parties who occupy the suit land were never involved in the suit. That on the hearing of the application, he was taken ill and had to rush to a pharmacy to obtain some medication. Counsel said that the mistake was entirely his and that the applicants have no other home.
3. The application is opposed through a replying affidavit sworn by Zuberi Abdalla Hassan, the 2nd plaintiff on the basis that the 1st plaintiff/respondent passed on November 11, 2022. That the application which was dismissed was seeking to stay a judgment made on July 13, 2022 and to re-open the suit for a rehearing. That Yusuf Juma the elder brother of the 3rd – 10th intended parties was the administrator of the estate of their late father and was the defendant in the suit who represented the estate in the hearing in that capacity. That the applicants are not in danger of eviction since the judgment only decreed 0.006 ha of the suit land to the decree holders.
4. Further, the respondent averred that the application was filed 5 months down the line hence the applicants were indolent and litigation must come to an end. That ownership in LR No Mjini/64/20 Mumbi Estate Muranga has no bearing to this suit. That the application is made in bad faith, is a waste of the court's time, unmerited and out to delay justice.
5. In the 2nd application, the court is asked by the decree holders to allow the executive officer of the court to sign the necessary documents to effect the subdivision of LR No Ntima/Igoki/610 for the transfer of 0.06 ha out of the suit land to them as ordered by the court, the reason since the defendant/judgement debtor has refused to do so. The application is supported by an affidavit of Zuberi Abdalla Hassan dated January 18, 2018 rehearsing the same grounds inter alia, that the defendant has refused to comply with the decree.
6. Husein Juma Yusuf the intended 2nd interested party has opposed the application through an affidavit sworn on February 1, 2023 on behalf of the intended 3rd -10th interested parties. He stated that they sought to stay and for the review of the judgment which application was dismissed for non-prosecution or non-attendance on January 16, 2023, otherwise if this application is allowed, it would prejudice their said application and rights. He urged the court to withhold determining this application until the outcome of the application dated January 16, 2023.
7. The court has carefully gone through the two applications. The issue for determination is whether the two applications are merited or not. In the 1st application, there is no dispute that the court on July 13, 2022 delivered its judgment against the estate of the late Juma Yusuf which was duly represented by its legal representative, the judgement debtor herein, in line with the law of succession. Thereafter, the application dated November 8, 2022 was filed on November 14, 2022 and certified urgent with directions that it be served for inter parties on January 16, 2023.
8. When the said application came up the court was requested by counsel holding brief for the firm intending to come on record to list it for hearing at 11 am, which it did. At 11 am, there was no appearance by the applicant's counsel. The respondent's counsel proceeded and urged the court to dismiss the application for non-prosecution/non-service, which it did in line with the law.
9. The reason given for non-appearance is an alleged sickness by counsel for the intended interested parties. Other than this reason, there is no reason given why the application was not served as per the directions issued on November 14, 2022. The application affects all the parties to the suit. The judgement debtor was ably representing the estate of the deceased until the judgment through M/s Ndubi Ondubi and Associates. No single affidavit has been filed to indicate that the said law firm was



served by January 16, 2023 with the two applications. The affidavit in support by Charles Omari is silent on this aspect.

10. Further, there is no evidence that the firm of Kaberia Arimba Advocates had sought for and obtained leave from the defendant's former law firm to come on record. The said law firm and the interested parties are not possessed of any letters of administration unlike the defendant. They cannot therefore purport to represent the estate of the deceased or allege about any prejudice to their interests to the suit land without locus standi granted in a probate court to replace a bonafide legal representative. A party who lacks capacity in a suit cannot in my view allege any irreparable loss.
11. In the case of *Civicon Limited v Kivuwatt Limited (2015) eKLR*, *Tang Gas Distributors Limited v Said & Others (2014) EA 448* the court took the view that a party seeking joinder at the execution stage must demonstrate stake and is not an automatic request. In this application, the intended parties have no stake given that they have not displayed any letters of administration or beneficial interest to the estate, which was not safe guarded by the judgement debtor at the hearing. Additionally, the intended parties have failed to serve the application upon the defendant. I find no basis to review, set aside the judgment or reopen the suit.
12. As regards the 2nd application, the suit was allowed as prayed. One of the prayers in the alternative by the plaintiffs was for the Deputy Registrar of the court to be allowed to execute the decree. The extracted decree already captures that aspect. Therefore, the application lacks merits.
13. The upshot is that the two applications are hereby dismissed with costs for lack of merits.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 19TH DAY OF APRIL, 2023

HON CK NZILI

ELC JUDGE

In presence of:

C/A: John Paul

Miss Kimotho for respondent

Kaberia Arimba for applicant – Omari present

