



**M’njogu v Meru County Lands Registrar & 2 others (Judicial Review
31 of 2013) [2023] KEELC 17721 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17721 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW 31 OF 2013**

**CK NZILI, J
MAY 31, 2023**

BETWEEN

JEREMIAH M’NJOGU APPELLANT

AND

MERU COUNTY LANDS REGISTRAR 1ST RESPONDENT

MERU COUNTY LANDS SURVEYOR 2ND RESPONDENT

NATIONAL LANDS COMMISSION 3RD RESPONDENT

RULING

1. Before the Court is an application dated October 28, 2013, the Court is asked to order that the Meru High Court order dated September 26, 1990 be deemed as unexisting, invalid, void of all its bearings on the grounds that it was reviewed by another order dated March 19, 1991. The second prayer is that the unexecuted order dated March 19, 1991, be deemed overtaken by the Court of Appeal consent order dated March 17, 1991. The third prayer is that the 1st & 2nd respondents be empowered to reinstate LR No Ntima/Ntakira/685 to enable compliance with the Court of the Appeal consent order, register RL 19 in respect of the land and not charge further registration fees, draw new survey mutation forms to be signed by the administrator of the estate in conformity with the Meru Bypass Road Project Acquisition Drawings and to cooperate with the administrator of the estate in drawing it and lastly the applicant be set at liberty to execute the Court of Appeal order without interference with the 1st & 2nd respondents. The application is supported by an affidavit of Jeremiah M’Njogu sworn on October 25, 2013.
2. The grounds are that he is the legal administrator of the estate of the late M’Twarugoji M’Kirimunya as per the confirmed grant dated October 14, 2009. That there has been a misapplication of the implementation of the High Court orders by the 1st & 2nd respondents since 1990 who ignored the stay orders, went ahead with the survey of the disputed land contrary to the orders dated November 23, 1990. That the offices went ahead to register, implement and the stayed orders and ignored the



replacement order dated March 19, 1991, which had ordered the re-planning of the disputed land despite an interpretation dated October 23, 1991 and correspondence made dated July 6, 1992, gazette notices dated June 21, 1996, May 20, 1991, June 7, 1991 & July 14, 1992 all attached as annexures marked JMN “1”, “2”, 3(a) (b) (c), 4, 5(a), (b), (c), respectively. That the 1st & 2nd respondents contemptuously continue and do not recognize the replaced order and have used its bearings to implement the Court of Appeal consent order through the mutation drawn by the high court executive officer. That out of improper use of documents, the 1st & 2nd respondents have ignored the Court Appeal views and chopped off part of the land to add to the road area together with properties without compensation. That the 1st & 2nd respondents have no legal authority to deal with the suit land without involving the administrator.

3. In implementing the Court of appeal order, the 1st & 2nd respondents should abandon everything they previously did and start the survey afresh of LR No Ntima/Ntakira/2489, as indicated in the commission on administrative justice letter dated July 2, 2013 attached as JMN “6” (a), (b) & (c). That what has been done was contemptuous of the court orders. That LR No Ntima/Ntakira/685 has to be reinstated and registered in the administrator’s name and subdivided as per the Court of Appeal consent order in conformity with the Meru Bypass Road Project – Land Acquisition Drawing attached as annexure marked JMN “7”, which did not affect the LR No Ntima/Ntakira 685, 2488 & 2489. That the 1st & 2nd respondents assumed the role of the administrator dealing with the land without consulting him on what they were doing. That the 1st respondent should reinstate the land, register an application for RL 19, and leave the rest to the administrator to deal with the 2nd respondent or even do the work privately. The application was served upon the respondents, and Geoffrey Mburugu M’Mukiri swore an affidavit of service filed on November 11, 2013.
4. Even though the respondents were served with a hearing notice dated February 7, 2023 and acknowledged receipt on February 15, 2023, they neither attended the hearing on March 7, 2023, nor file any written response or submissions opposing the notice of motion.
5. By written submissions dated February 13, 2023 the applicant submitted that the consent orders dated May 15, 1991 were self-explanatory as well as the letter dated January 9, 2014, from the 1st Respondent and the chief land registrar. Further, the applicant submitted that the letter dated December 23, 2008, from the Hon Attorney General and the orders dated May 19, 1988 in Meru High Court Civil Appeal No 21 of 1990 which order was enforced by Hon Justice Oguku J.
6. The applicant submitted that this Court should allow the prayers sought on the strengths of the attached letters where he had urged the respondents to concede to this matter to avoid further litigation.
7. The applicant approached this Court through this notice of motion which was filed on October 28, 2013. Other than the application, there are no other proceedings in the file. There are no proceedings attached for the Meru High Court Civil Appeal No 21 of 1990.
8. Annexure marked JMN “1” is a confirmed grant in Meru HC Succession Case No 351 of 2002, where the applicant was confirmed as an administrator for the estate of M’Twarugoji, M’Kirimunya alias M’Twarugoji, owner of LR No Ntima/Ntakira/2555, 2557, 685 and 2556.
9. Annexure marked JMN “2” is an order in Meru H.C Civil Appeal No 21 of 1990 while JMN 3 (a) is a ruling delivered on March 19, 1991. Similarly, annexure JMN “4” is a ruling delivered from the Court of Appeal dated May 17, 1991. there is no indication if a decree was extracted and served upon the respondents for implementation.



10. In a letter dated July 14, 1992, the court of appeal registry clarified the order which was made and directed that the order be served upon the land registrar. In the annexure marked JMN “6 (b)” dated June 19, 2013, the land registrar confirmed receipt of the order and undertook to have the land resurveyed as per the Court of Appeal order.
11. Further, in the letter dated November 1, 2010, annexure JMN 6 (c) the land registrar sought for the resubmission of the caution over LR No Ntima/Ntakira/2488 and for the Court to reinstate LR No Ntima/Ntakira/688.
12. In this application, the Court is asked to declare the order dated September 26, 1990 as invalid since it was reviewed by another one dated 17.3.1991 from the Court of Appeal. The Court is also asked to order that the 1st & 2nd respondents do implement the Court of Appeal consent order dated May 17, 1991 by reinstating LR No Ntima/Ntakira/685.
13. There are no official copies of searches and or survey records to show the nature and extent of any changes which may have happened between 1990, the present and beyond.
14. There are no land registrar or land surveyor reports or records accompanying the application for this Court to know the extent to which the 1st & 2nd respondents have purported to ignore the Court of Appeal consent order.
15. The applicant has not told this Court whether he extracted a decree and served it upon the respondents and after annexure JMN (6) (a) (b) & (c) have not been executed.
16. As indicated above, the primary suit in which the two decrees both at the High Court and the Court of Appeal in Meru High Court Appeal No 21 of 1990. This application has been made before this Court in a miscellaneous civil application.
17. It is not clear why the applicant has opted to open another file while the execution process should be undertaken in the primary file.
18. Additionally, any decree for a recovery of land must be executed within 12 years from the date of the decree otherwise it becomes statute barred under Sections 4 (4) and 7 of the *Limitation of Actions Act*.
19. In this application, no decree had been attached. There is also no evidence that there was a notice issued in the primary file against the respondents who are bound by the decree to explain why the decree has not been executed. What is before the Court is neither a notice to show cause nor an application for the execution of the decree.
20. The Court is also asked to declare the unexecuted High Court order as overtaken by events due to the later Court of Appeal order and to identify the wrongs committed by the 1st & 2nd respondents.
21. Similarly, the Court is asked to reinstate LR No Ntima/Ntakira/685 so that the consent order from the Court of Appeal can be implemented. All these in my view are matters falling within the Court which should has the jurisdiction to execute the decree.
22. This Court cannot execute a decree issued by a court of concurrent jurisdiction.
23. The order attached to the submissions by the applicant was issued at the High Court on February 24, 2023. This means that primary file exists otherwise the applicant would not have extracted the order.
24. Even as the Court is asked to review the previous order, still Order 45 of *Civil Procedure Rules* as read together with Section 80 of the *Civil Procedure Act*, provides that such an application be made before the Court which issued the orders.



25. In *M'Rinkanya & another vs Gilbert Kabeere M'Mbijiwe* (2007) eKLR, the Court while considering Section 4 (4) of the *Limitation of Actions Act* held that post-judgment proceedings including original proceedings and interlocutory proceedings for execution of judgment stand statute-barred after 12 years.
26. In accordance with this section as read together with Sections 7 of the *Limitation of Action Act* what is before this Court is indicated is a judicial review proceeding yet there is no evidence that the applicant filed a substantive application for judicial review accompanied by statutory statement verifying affidavits and an application for leave to institute the proceedings.
27. The applicant cannot merely file a notice of motion that is not based on any substantive suit or claim.
28. Section 19 of the *Civil Procedure Act* provides that every suit shall be instituted in such manner as may be prescribed by the Rules. The same obtains with Order 3 Rule (1) and (7) *Civil Procedure Rules*.
29. A notice of motion is not legally recognized as an originating process. It can only be filed in a legally instituted suit. This was the holding in *Geoffrey Ndungu Theuri vs LSK* (1988) eKLR, and *Proto Energy Ltd vs Hasbi Energy Ltd* Misc 18 of 2018 and *Dishon Ochieng vs SDA Church Kodiaga* (2012) eKLR.
30. The upshot is that I find the application dated October 28, 2013 as not only fatally defective but also lacking merits. The same is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 31ST DAY OF MAY 2023

In presence of

C.A John Paul

Mbaikyatta for defendants

Jeremiah in person

HON. CK NZILI

ELC JUDGE

