



Orori (Suing for and on behalf of the Estate of Jeremiah Orori Nyamwaro (Deceased)) v Nyakambi (Sued as the administrator of the Estate of Nyakambi Nyamwaro (Deceased)) (Environment & Land Case 63 of 2021) [2023] KEELC 17765 (KLR) (30 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17765 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 63 OF 2021
JM KAMAU, J
MAY 30, 2023
(FORMERLY AT ENVIRONMENT AND LAND COURT AT KISII CASE NO. 100 OF 2014)

BETWEEN

ALFRED NYABUTI ORORI PLAINTIFF
SUING FOR AND ON BEHALF OF THE ESTATE OF JEREMIAH ORORI
NYAMWARO (DECEASED)

AND

ALEX NYAMWARO NYAKAMBI DEFENDANT
SUED AS THE ADMINISTRATOR OF THE ESTATE OF NYAKAMBI
NYAMWARO (DECEASED)

RULING

1. In the Applicants' Application dated 29/12/2022 and 17/01/2023 respectively, both seek for the reassessment of the Bill of Costs dated 19/09/2022 and delivered on 31/10/2022. For the Defendant, the only offending assessment is in respect to Item No. 1 of the said Bill. As for the Plaintiff the offending assessments are in respect to Item Nos. 1, 2, 21, 37 and 40. Both parties request me to have the aforesaid Items re-assessed and varied. The Bill is the Defendant's. The Decree is dated 26/04/2022. The claim in the Amended Plaint is for: -
 - a. A declaration that the deceased Jeremiah Orori Nyamwaro and Nyakambi Nyamwaro deceased were equal and joint owners of one share in Kerumbe Farm which measures 32.61 Hectares or thereabouts or approximately in land parcel No. Kerumbe Farm 940/19.
 - b. An order directing the Defendant herein to transfer half of the said one share in Kerumbe Farm i.e. 16.3 Hectares or thereabouts to the Plaintiff for and on behalf of the estate of Jeremiah Orori Nyamwaro.



- c. That in the alternative the Defendant be ordered to transfer the portion as demarcated on the ground and currently occupied by the estate of Jeremiah Orori Nyamwaro.
- d. Costs of this suit be paid by the Defendant.
- e. This court may order or grant any relief it may deem fit and just.

The Defendant's Claim was for: -

- a. A permanent injunction restraining the Defendant, his agents and or servants from in any way whatsoever trespassing upon L.R. Kerumbe Farm/940/2.
- b. Eviction.
- c. Costs.

And the Judgment reads as follows: -

- a. The Plaintiff's claim be and is hereby dismissed with costs.
- b. A permanent injunction be and is hereby partially granted i.e. in respect to any other portion beyond the 10 Acres around the Plaintiff's homestead which had been initially given to him by the Defendant's family.
2. The property in Question is the parcel of land measuring 32.61 Hectares known as Kerumbe Farm 940/19, 32.61 Hectares which is equivalent to 81.5 Acres. But what was in issue was 16.3 Hectares i.e. 40.75 Acres. If you multiply the average value of an Acre at Kshs. 1,000,000/= this would therefore translate into Kshs. 40,750,000/=. Going by the current Remuneration order, for the first Kshs. 1 Million on the higher scale the instruction fees is Kshs. 120,000/=. Then for Kshs. 39,750,000/=. the instruction fee is Kshs. 596,250/=. I would enhance this to Kshs. 850,000/=. As for the getting up fees Item No. 2, 1/3 of Kshs. 716,250/= is Kshs. 283,300/=. As for Item No. 12, for an Application for injunction I would award Kshs. 10,000/=. For Item No. 37, I would award Kshs. 7,500/= and Kshs. 7,500/= for Item No. 40.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 30TH DAY OF MAY 2023

MUGO KAMAU

JUDGE

In the Presence of: -

Nyangaresi - Court Assistant

Mr. Nyamari for the Plaintiff

N/A for the Defendant

