



REPUBLIC OF KENYA



**Njiru & 15 others v Ramadhan (Sued as the Administratrix of the Estate of the Late Allan Kipchumba Malel – Deceased) (Environmental and Land Originating Summons 13 of 2021) [2023] KEELC 17286 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17286 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 13 OF 2021**

**EO OBAGA, J**

**MAY 11, 2023**

**(FORMERLY HCC 29/2018)**

**BETWEEN**

**JACKLINE NYAWIRA NJIRU ..... 1<sup>ST</sup> PLAINTIFF**  
**CELLY NEKESA NYONGESA ..... 2<sup>ND</sup> PLAINTIFF**  
**PHILIP ISAAC ODERA OMOLLO ..... 3<sup>RD</sup> PLAINTIFF**  
**ROCE NDUNGE KIOKO ..... 4<sup>TH</sup> PLAINTIFF**  
**PHYBIAN CHEPKORIR TANUI ..... 5<sup>TH</sup> PLAINTIFF**  
**ROBERT NYANGAU ..... 6<sup>TH</sup> PLAINTIFF**  
**GRACE CHELIMO SUGE ..... 7<sup>TH</sup> PLAINTIFF**  
**JAPHETH SETH OITO OCHOLA ..... 8<sup>TH</sup> PLAINTIFF**  
**CHIRCHIR PAUL KIPKOECH ..... 9<sup>TH</sup> PLAINTIFF**  
**GOLLAN KIPKOECH BITOK ..... 10<sup>TH</sup> PLAINTIFF**  
**KIPSANG CHEMENGICH KALIWAI ..... 11<sup>TH</sup> PLAINTIFF**  
**ESTHER SUNGU AMWAYA ..... 12<sup>TH</sup> PLAINTIFF**  
**SAMWEL KIBARU ..... 13<sup>TH</sup> PLAINTIFF**  
**LEVIN KIPKORIR LIMO ..... 14<sup>TH</sup> PLAINTIFF**  
**BENSON GWAYUMBA MUHANJI ..... 15<sup>TH</sup> PLAINTIFF**  
**GEOFREY EMOJA ANGALUKI KABOGOI ..... 16<sup>TH</sup> PLAINTIFF**

**AND**



**ALIMA CHERONO RAMADHAN ..... DEFENDANT**  
**SUED AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE ALLAN**  
**KIPCHUMBA MALEL – DECEASED**

**RULING**

**Introduction**

1. This is a ruling in respect of a notice of motion dated 19/1/2023 in which the Defendant/Applicant seeks the following orders: -
  1. Spent
  2. That this honorable court be pleased to vary order of injunction made on the 10<sup>th</sup> July, 2018 by Hon. Justice Githinji covering and affecting land parcel Pioneer Langas Block 1 (Malel)/379 or resultant subdivision 924 – 947.
  3. That the honourable court do restrict the order to land parcel Pioneer/Langas Block 1(Malel) 927 to 932 and 934 to 947.
  4. That caution on land parcel Pioneer/Langas Block 1 (Malel)/379 be ordered removed.

**Background:**

2. The Plaintiffs/Applicants filed an originating summons on 10/7/2018 before the High Court in which they sought various reliefs in respect of LR. No. Pioneer Langas 1 (Malel)/379 together with the resultant subdivision ranging from Nos. 924 to 947. The Applicants contemporaneously filed a notice of motion seeking injunction order against the Defendant/Respondent.
3. On 10/7/2018 the application for injunction was placed before Justice Githinji. The judge certified the application urgent and granted injunctive order pending hearing and determination of the application inter-partes. The judge directed that the application be heard in the next 14 days.
4. The Applicants' advocate took a hearing date at the registry on 10//7/2018 for inter-partes hearing on 25/7/2018. On 25/7/2018, the advocates for the parties appeared before the Deputy Registrar who extended interim orders by consent of the parties. A date for hearing of application was fixed for 23/10/2018.
5. On 23/10/2018, the advocates for the parties appeared before the judge and informed the judge that there were preliminary objections which had been filed by the Defendant and plaintiffs and that they wanted the two preliminary objections heard together. The judge then directed that the preliminary objection by the Plaintiffs be heard first as its outcome will determine the need to hear that of the Defendant. Directions on submissions were given. Though the Plaintiffs' counsel requested for extension of interim orders, no order was made to that effect. The matter was set for mention on 21/11/2018.
6. On 21/11/2018, a ruling date for the Plaintiffs' preliminary objection was set for 19/12/2018 and interim orders were extended until then. On 19/12/2018, the matter was mentioned before the Deputy Registrar who fixed ruling date on 20/3/2018 though she meant 2019. Nothing happened in between 19/12/2018 and 1/10/2019 when ruling on the Plaintiffs' preliminary objection was delivered. There was no extension of interim orders.



7. On 13/5/2020, the file was transferred to the Environment and Land Court when Lady Justice Omondi (as she then was) found that she had no jurisdiction to handle the matter as it was a land matter.

#### **Applicant's Contention;**

8. The Applicant contends that the Respondents herein had obtained injunctive orders against her in this matter. The injunction affected LR No. Pioneer Langas Block 1 (Malel) 379 together with the resultant subdivisions ranging from 924 to 947.
9. The Applicant states that not all subdivision are the subject of this suit. She states that she has sold parcel Nos. 924, 925 and 926 to Abraham Kirwa Saina who proceeded to have titles for his three parcels in 2017 even before this suit was filed.
10. The Applicant further states that she retained parcel 933 for herself. This parcel is not occupied by anyone and it is not subject of this suit. She states that the third parties to whom she had sold the undisputed portions cannot develop their parcels and are threatening to file suits against her. It is on this basis that the Applicant is seeking to have the injunctive order varied to exclude the undisputed portions and have the injunctive orders restricted to the disputed parcels.

#### **Respondents' Contention;**

11. The Respondents contend that the Applicant's application is not based on any enabling provisions of law; that the application is made at the behest of persons who are not parties to the suit; that he Applicant should instead have appealed against the orders if aggrieved; that the Applicant is guilty of laches; that there are prescribed ways for removal of a caution and that the Applicant cannot dictate the scope of relief to be granted to the Respondents.

#### **Analysis and Determination;**

12. The parties were directed to file written submissions. The Applicant filed her submissions on 28/2/2023. The Respondents filed their submissions on 13/3/2023. I have gone through the submissions by the parties herein. The issue of removal of caution has been abandoned through the submissions. The only issue for determination is whether the injunctive orders should be varied.
13. There is no contention that the injunction orders which were given on 10/7/2018 and subsequently extended affected LR. No Pioneer Langas Block 1 (Malel)/379 together with resultant parcel Nos. 924 to 947. There is also no contention that parcel Nos. 924, 925, 926 and 933 are not subject of this suit. Parcel Nos. 924, 925 and 926 are registered in the name of Abraham Kirwa Saina who is not one of the parties to this suit. Parcel No. 933 is for the benefit of the Applicant.
14. Order 40 Rule (7) is clear that any party who is affected by an order of injunction can apply to have it set aside or varied. Though the Applicant did not cite this provision, that does not defeat her application. Though Abraham Kirwa Saina is not a party to this suit, he is the one who is registered owner of parcel Nos. 924, 925 and 926. He is entitled to have his properties freed from any encumbrances as he is not part of this suit. It is the Applicant's obligation to ensure that Abraham Kirwa Saina enjoys his properties. The Applicant has a right to enjoy her property that is parcel No. 933. This can only be achieved by varying the injunctive orders of 10/7/2013 which were subsequently extended to exclude parcel Nos. 924, 925, 926 and 933.



**Disposition;**

15. It is clear from the above analysis that the Applicant's application is well founded. The injunctive orders granted on 10/7/2018 and subsequently extended are hereby varied to the extent that the order shall only affect parcel Nos. 927 to 932 and 934 to 937. The orders affecting parcel Nos. 924, 925, 926 and 933 are hereby ordered discharged. The costs of this application shall be costs in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 11<sup>TH</sup> DAY OF MAY, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Mogambi for Plaintiffs.

Ms. CD Nyamweya & Co. for Defendants - absent

Court Assistant –Laban

