



**M’Njogu v Meru County Land Registrar & 3 others; H. Young  
& Co. (E.A) Ltd & another (Interested Parties) (Civil Appeal  
21 of 1990) [2022] KEHC 15928 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15928 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL 21 OF 1990  
EM MURIITHI, J  
NOVEMBER 30, 2022**

**BETWEEN**

**JEREMIAH M’NJOGU ..... APPLICANT**

**AND**

**MERU COUNTY LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT**

**MERU COUNTY LANDS SURVEYOR ..... 2<sup>ND</sup> RESPONDENT**

**MERU COUNTY LANDS CONTROL BOARD ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**H. YOUNG & CO. (E.A) LTD ..... INTERESTED PARTY**

**MARTHA NAITORE M’MURITHI ..... INTERESTED PARTY**

**RULING**

**Brief history of the case**

1. The Court of Appeal vide a consent order dated May 17, 1988 ordered that, 'M’Tuarugoji Kirimunya to transfer 1½ acres of the suit property to Samuel M’Murithi and 2 acres to Jeremiah Njogu and to retain the remainder for himself (roughly half an acre or thereabouts).'
2. On September 26, 1990, Ojuk J declared Janet Tirindi Kathunguri to have a life interest in half acre of the suit property around her existing house on that land, which portion of ½ acre of land should be properly surveyed and marked out. It was further ordered that the reversionary interest on the said ½ acre should go to any son of Twarugoji Kirimunya who she will appoint as her successor. It was further ordered that any intended sub division by Twarugoji Kirimunya of the suit property would not take



effect until the ½ acre portion was first excised and registered in the name of Janet Tirindi with the words 'Trustee' added against her name. Twarugoji Kirimunya was thereafter empowered to sub divide the remaining portion of the suit property amongst his family as he deemed fit.

3. Jeremiah M'Njogu applied to the court (Oguk J) to review his decision of September 26, 1990 on the basis that it contradicted the Court of Appeal consent order of May 17, 1988. In its decision of May 19, 1991, the Court (Oguk J) stated that:

' The decision of this court sought to be reviewed is reconcilable with the decision of the Court of Appeal. In that the half acre portion which under the Court of Appeal decision was to go to M'Tuarugoji Kirimunya will be the same ½ acre or thereabouts which under the decision of this court will now pass on to the Respondent, Janet Tirindi Kathunguri.'

4. On May 17, 1991, the Court of Appeal, in dismissing an application for stay of execution of the decision of the Court (Oguk J) held that:

' Samuel Mureithi and Jeremiah Njogu share the cost of sub division so that each of the interested parties can ascertain which of the portion is rightly his. Thereafter the applicant (Jeremiah Njogu) and the respondent (Janet Tirindi) will know the portion that they are interested in.'

5. It appears the suit property was subsequently subdivided into Ntima/Ntakira/2488 and 2489.
6. It further appears that Janet Tirindi obtained registration of Ntima/Ntakira/2488 in her name on June 18, 1997 and Jeremiah Njogu moved to the High Court to challenge that registration. The Court (Kuloba J) on December 9, 1997 ruled that:

' It is alleged that Mr Mutea the then Executive Officer of this court misled the Land Registrar vide his letter dated July 28, 1992 which he signed on behalf of the Deputy Registrar. The said letter quoted some portions of Judge Oguk's judgment. Unfortunately, the letter omitted portions of the said judgment where the words Trustee were to be endorsed against the name of Janet Tirindi Kathunguri in the title deed which she was to obtain. The obvious result was that half-acre was excised out of No 685 and registered as Ntima/ntakira/2488 in name of Janet Tirindi Kathunguri absolutely. This was plainly wrong. Since the judgment of Oguk J dated September 26, 1990 has been not overturned, the Land Registrar should comply with the same. I do order that the Registrar in respect of LR Ntima/ntakira/2488 be rectified by inserting the words Trustee in Kathunguri to against her name. Janet Tirindi Kathunguri to continue occupying LR Ntima/ntakira/2488 until further orders of the Court of Appeal.'

7. On May 15, 2003, the Court (Kasanga Mulwa J) in dismissing an application by Jeremiah Njogu to stop the implementation and execution of the Court of Appeal consent orders, stated that:

' The applicant sought the interpretation of the Court of Appeal order dated May 17, 1991. He was given the interpretation through a letter from the Court of Appeal dated October 23, 1991. The letter is self-explanatory. I find that the orders contained therein are the same as those in the order itself. I have no doubt that is the order to be executed. I have read the letter from the Ministry of Lands dated February 20, 2003 carefully. I have found that the order of March 5, 2003 is the right order to be implemented. I have therefore seen no reason as to why the respondents should be restrained from implementing the same. The applicant has not offered me good and sufficient reason as to why I should grant him the orders sought.



I find that the application herein is mischievous frivolous, aimless and amounts to an abuse of the due process of this court. In the light of the foregoing circumstances and or findings, I hereby dismiss this application. The applicant will pay the costs of this application to the two ladies (interested parties) who were in court for the hearing i.e Janet and Martha. For avoidance of any doubt, I hereby order that any interested party in the parcel of parcel of land now the subject matter of this application be at liberty to execute the Court of Appeal order May 17, 1991 in accordance with its subsequent interpretation. It is so ordered.'

8. This court has looked at the letter from the Court of Appeal where the interpretation of the Court of Appeal orders of May 17, 1988 and May 17, 1991 was provided as follows:

' The terms of the consent order are that Land Ntima/Ntakira/685 is to be divided into three portions of 1½, 2 and ½ acres to be transferred as follows:

- 1½ acres to Samuel M'Mureithi, 2 acres to Jeremiah Njogu, ½ acres to be retained by Twarugoji Kirimunya and Janet Tirindi Kathunguri to live on ½ acre retained by Tharugoji for life. Fees for sub-division to be paid by Samuel M'Mureithi and Jeremiah Njogu.'

9. An application dated October 4, 2010 was filed in court by Janet Tirindi Kathunguri seeking approval of the appointment of Gelse Mutethia Johnas Janet Tirindi Kathunguri's successor in terms of the judgment of Honorable SO Oguk dated September 26, 1990. On February 3, 2011, the Court (Lesiit J) ordered:

' That this court approves the appointment of Gelse Muthethia Johnas the applicant/ Respondent's successor in terms of judgment of Honorable Oguk dated September 26, 1990; That an order be and is hereby issued transferring LR Ntima/Ntakira/2488 measuring approximately ½ acre to the said Gelse Mutethia Johnas absolutely.'

10. That did not sit well with Jeremiah M'Njogu, who moved the Court by Chamber Summons filed on October 27, 2011 seeking review of those orders and reinstatement of Ntima/Ntakira/685. He averred at paragraph 6 of his affidavit in support that:

' By the time Twarugoji Kirimunya had died and Jeremiah who was the administrator was the one reflected as the applicant hence the portion to be transferred to the applicant means the said parcel to be transferred and registered in my name and that is ½ acre.'

He urged the Court at paragraph 14 of the said affidavit that:

' To adhere to the Court of Appeal Orders to avoid any further confusions and or misinterpretations and to help check on any fraudulent and or irregular activities and frivolous advances by any individuals.'

11. The Court (F Gikonyo J) was invited to interpret all the court orders in this file and the learned judge stated in his ruling dated January 25, 2018 as follows:

' From the foregoing, unless, the contrary is proved, in my view, the order of Oguk J still subsists as it has not been reviewed by this court or reversed by the Court of Appeal. The orders in controversy are in my opinion simple, straight forward and self-explanatory and there is nothing left for this court to interpret. I note other judges have been invited to a similar interpretative requests and have given their views which are not different from mine.



Any substantive order should now be obtained from the Court of Appeal upon proper pleading. I hope the matter will now rest.'

12. Did the matter rest? No. The Court was once again moved on April 16, 2018 by Jeremiah M’Njogu to clarify which of its rulings of September 26, 1990 and March 19, 1991 was meant for execution. In its ruling delivered on October 29, 2018, the Court (F Gikonyo J) had this to say:

' As I have stated before, I am yet to be shown any order from the Court of Appeal reversing the judgment of September 26, 1990. How I wish the applicant could go back to the Court of Appeal - if there are proceedings there - and ask for appropriate orders rather than keep on coming back to this appeal which was concluded long time ago. I even doubt in the state of things, whether this court has any judicial power left to exercise in these proceedings. I declare this court functus officio. This court will not engage itself in any interpretation session of the orders of the Court of Appeal.'

13. On March 7, 2019, the dispute spilled over to the Environment and Land Court. Jeremiah M’Njogu sought from that court cancellation of the sub division of Ntima/Ntakira/685 and implementation of the Court of Appeal consent order of May 17, 1988, where the ELC Court (Lucy N Mbugua J) dismissed Meru ELC JR No 19/2016 and Meru ELC JR No 5/2008, and marked the case as closed.

### **The applications**

14. Here we are again in 2022, with 4 applications by Jeremiah M’Njogu, the applicant herein, dated January 27, 2022, February 16, 2022 and March 15, 2022 (henceforth called the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applications, respectively).

### **The 1st application**

15. It seeks that: '1) Because Court File No 22 of 1984 was Destroyed through Kenya Gazette No 949 dated January 15, 2019, I pray that this Honorable Court to allow this Application to be referred to High Court file No 21 of 1990 as it refers the Court of Appeal matters 2) This Honorable court be pleased to enforce execution of the said Court of Appeal order as follows: a) By empowering the 1<sup>st</sup> respondent (Meru County Land Registrar) to reinstate parcel No Ntima/Ntakira/685 and to cancel the illegal title Deed issued to Janet Tirindi Kathunguri, for fresh sub-division. b) By empowering the County Land Surveyor to cancel the wrong sub-division mutation and to draw a correct sub-division mutation in concurrence with the Court of Appeal. c) By issuing restriction order to the instant 2<sup>nd</sup> interested party (Martha Naitore M’Murithi) from interfering with implementation of the Court of Appeal Order as has been the case with her. d) By empowering the 4<sup>th</sup> respondent (The National Land Commission) to grant sub-division consent to the court of Appeal Orders. e) By ordering the 1<sup>st</sup> interested party (H Young & Co (EA) Ltd) to adhere with High Court Order dated June 3, 2015 issued against the 1<sup>st</sup> interested party in JR No 31 of 2013.'
16. In his supporting affidavit sworn on even date, the applicant contends that the Court of Appeal vide its ruling of March 19, 2021 made it clear where execution proceedings of the Court of Appeal order should take place, hence this application. He urges this court to enforce execution of the Court of Appeal order by granting the orders prayed for, to enable the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents to comply with the implementation of the Court of Appeal order.



## **The 2nd Application**

17. It seeks, '1. That the Honorable Meru High Court be pleased to recognize the Court of Appeal orders dated May 17, 1988, May 17, 1991 and March 19, 2021 that parcel of land No Ntima/Ntakira/685 belongs to Samuel M'Murithi with 1½ acre, Jeremiah M'Njogu with 2 acres and Twarugoji Kirimunya ½ acre or thereabout and to acknowledge that the suit land does not belong to the deceased any longer for it henceforth changed ownership lawfully for the Court of Appeal order is law. 2. That this Hon Court be pleased to rule out any other dispute of any form brought before it concerning parcel No Ntima/Ntakira/685 before the Court of Appeal orders are implemented to the letter.'
18. In his supporting affidavit sworn on even date, he faults the court for failing to recognize the Court of Appeal orders by allowing the litigation herein to continue yet the same was settled by the Court of Appeal.

## **The 3rd application**

19. It seeks, 'That this honorable Court be pleased to order the AG to substantiate the AG letters Ref AG/MRU/J/133 dated December 23, 2008 and the AG'S Grounds Of Objection dated November 10, 2021 and the AG's clients' letters Ref: Ntima/ntakira/685 dated March 23, 2003 and Ref: MER/ADM/16/VOL 1/137 dated November 1, 2010, Ref: MER/ADM/COM/VOL 1/137 dated January 9, 2014 and Application for Registration dated July 21, 2020 in comparison to Court of Appeal letters dated October 23, 1991 and July 14, 1992, failure to which the AG must withdraw the Grounds Of Opposition and concede with the Motion seeking enforcement of implementation of Court of Appeal orders as instructed by AG's clients. 2. That this honorable Court be pleased to restrain the AG from preventing the Ministry of Lands from implementing execution of Court of Appeal orders, and from inciting parties of this case to oppose execution of Court of Appeal orders.'
20. In his supporting affidavit sworn on even date, he refers to various letters by the AG acknowledging settlement of this land dispute by the Court of Appeal. He accuses the AG of going against their word by inciting its clients to defy the implementation of the Court of Appeal orders, and he urges the court to enforce the execution of the Court of Appeal order without further hindrance as has been the case.

## **The 4th Application**

21. It seeks '1) That the respondent (Martha Naitore M'Murithi) do intricate her legal basis for her opposing of execution of Court of Appeal orders and for seeking revocation of certificate of confirmation of a grant on the grounds that the instant applicant has failed to comply with the High Court ruling dated September 26, 1990 (Oguk J) failure to which this honorable court is prayed to restrict the respondent herein from interfering with the execution of Court of Appeal orders and the suit land. 2) That the instant respondent do prove her claim that the Court of Appeal did not settle Meru High Court Appeal No 21 of 1990 and the Court of Appeal letters dated October 23, 1991 and July 14, 1992 were imaginary, failure to which this honorable court is prayed to find the respondent herein a Court of Appeal order Condemnor, and that she face the consequences for contempt of court.'
22. In his supporting affidavit sworn on even date, he accuses the respondent of failing to recognize the clarification by the Court of Appeal of its orders, by continuing to challenge the same in this court. He further accuses the respondent of making every effort to defeat the execution of the Court of Appeal order by having the grant revoked. He therefore wants the respondent to be found to be in contempt of the Court of Appeal orders and be retrained from interfering with execution of the said orders.



## Responses

23. Instead of responding to the applications, H Young & Co (EA) Ltd, the 1<sup>st</sup> interested party herein filed an application dated May 23, 2022 seeking to be struck out from these proceedings on grounds that it was contracted by Kenya Urban Roads Authority, to carry out constructions on a part of Ntima/Ntakira/685, and during the entire construction period, it was not served with a court order barring the same. After the completion of the construction was inspected on May 13, 2020, it was issued with a Taking Over Certificate, and since it had not vested any interest in the disputed land, Jeremiah M’Njogu does not have a claim against it.
24. Martha Naitore M’Murithi, the 2<sup>nd</sup> interested party swore a replying affidavit on June 30, 2020 in opposition to the application dated March 16, 2022 by the applicant. After giving the long history of this dispute, she accuses the applicant of going to great lengths to defeat the decision of Oguk J and wants the application dismissed.
25. She also filed an application dated June 29, 2022 seeking, '1) That a declaration be made that Mr Jeremiah M’Njogu and any other person in his group or claiming through him should be responsible for the costs of this suit. 2) That Mr Jeremiah M’Njogu be ordered to deposit the amount of Kenya Shillings Six Hundred Thousand (Kshs 600,000) or such other amount as this Honorable Court may deem reasonable with the court as security for costs in this matter within (30) days of the court’s order failing which the applications filed herein and dated March 15, 2022, February 15, 2022 and February 27, 2022 be dismissed. 3) That pending the hearing and determination of this application as well as the provision of such security for costs as shall be ordered by the court all further proceedings by Mr Jeremiah M’Njogu be stayed. 4) That Mr Jeremiah M’Njogu, in any event, be ordered to meet the costs of this application.'
26. In her supporting affidavit sworn on even date, she wants the applicant punished, by way of costs for dragging her and other beneficiaries in court for years on end as he lays claims, with no basis, to the estate of Janet Tirindi that was given to her by Oguk J.
27. The 2<sup>nd</sup> interested party also filed grounds of opposition dated June 30, 2022 on the grounds that the court is functus officio, as the issues raised herein have been dealt conclusively by other judges, and the applicant ought to have pursued an appeal instead of continuously filing numerous, vexatious and malicious applications on this closed file.
28. The applicant swore a replying affidavit on July 7, 2022 opposing the application dated June 29, 2022. He urges the court not to punish him for seeking enforcement of administrative justice, and he was preparing to take legal action on the certificate of confirmation of grant issued to the 2<sup>nd</sup> interested party on December 8, 2002.

## Submissions

29. The applicant filed 3 sets of submissions on July 20, 2022, August 3, 2022 and November 14, 2022. He submitted that the respondents were in contempt of the court orders, and went to great lengths to prolong execution of the Court of Appeal orders by demanding that the decision of Oguk J dated September 26, 1990 remained unchallenged to date contrary to the Court of Appeal orders of May 17, 1991 and March 19, 2021. He urged the court to recognize settlement of the land dispute and grant enforcement order for execution of Court of Appeal order so as to put a lasting solution to this dispute. He brought to the court’s attention the decision of November 3, 2022 by the Court of Appeal setting aside the ruling of Njoroge J of the Environment and Land Court (ELC) of February 19, 2018 and restoring the Motion of October 28, 2013 for hearing and determination on merits.



30. The 2<sup>nd</sup> interested party urged that the applicant had caused chaos and confusion by insisting on filing application after application in this matter, and relied on *William Koross (Legal personal Representative of Elijah CA Koross) v Hezekiah Kiptoo Komen & 4 others (2015) eKLR* where the Court of Appeal, faced with a protracted litigation on a singular matter quoted Charles Dickens' satire on intractable litigation rendered in his peculiar and memorable prose, in *Bleak House; (Bradbury and Evans, (1853); Gadsbill Edition, p5)* as follows:

' Jarndyce and Jarndyce drones on. This scarecrow of a suit has, in the course of time, become so complicated that no man alive knows what it means. Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce, without know how or why; whole families have inherited legendary hatreds with the suit. The little plaintiff or defendant, who was promised a new rocking-horse when Jarndyce and Jarndyce should be settled, has grown up, possessed himself a real horse, and trotted away into the other world a long procession of chancellors has come in and gone out; but Jarndyce and Jarndyce still drags its dreary length before the court, perennially hopeless.'

She urged the court to dismiss the applications, as this court is functus officio but prayed for her application for security for costs to be allowed.

### **Analysis and determination**

31. This court notes that the applicant's application, although framed and lodged as 4 separate applications raise the same issue of whether there exists a Court of Appeal order due for execution and enforcement by this court. The determination of the Interested Parties applications depends on the outcome of the applicant's applications.
32. On September 26, 1990, Oguk J declared Janet Tirindi Kathunguri to have a life interest in ½ acre of the suit property around her existing house on that land. The court further ordered that the reversionary interest on the said ½ acre should go to any son of Twarugoji Kirimunya who Janet Tirindi Kathunguri would appoint as her successor. Following the said court orders and in execution of the Court of Appeal orders of May 17, 1991, Janet Tirindi Kathunguri successfully obtained title to Ntima/Ntakira/2488 in her name as a trustee. Shortly before her death, she applied to court to approve her appointment of Gelsevse Mutethia John, as her successor. The allegation by the applicant that the said Court order has not been executed is, therefore, incorrect.
33. This court sees no contradiction between Justice Oguk's decision of September 26, 1990 and the Court of Appeal order of May 17, 1991. The Court of Appeal order of May 17, 1991 which was subsequently interpreted by the said court on October 23, 1991 read in part that, '½ acre to be retained by Twarugoji Kirimunya. Janet Tirindi Kathunguri to live on ½ retained by Twarugoji for life.' The applicant's objection seems to be with the part of the order directing Janet Tirindi Kathunguri to live on the ½ acre given to his deceased father, Twarugoji Kirimunya.
34. It must be remembered that the decision by Oguk J has not been reviewed, set aside or overturned on appeal, and therefore it still stands. This court notes, with sympathy that the issues raised by applicant in all his applications has since been conclusively dealt with by this court, and there is nothing more this court can do for him. The applicant had filed a similar application on April 16, 2018 seeking the court's intervention in knowing which of the Orders of September 26, 1990 and March 19, 1991 was



meant to be executed. The court (F Gikonyo J) on October 29, 2018, after affirming the decision of Oguk J of September 26, 1990 declared the court as functus officio.

35. It is clear the applicant has previously tried to stop the implementation of the Court of Appeal consent orders, but the Court (Kasanga Mulwa J), in dismissing an application by Jeremiah M’Njogu to stop the implementation and execution of the Court of Appeal consent orders, ordered that –

‘ For avoidance of any doubt, I hereby order that any interested party in the parcel of parcel of land now the subject matter of this application be at liberty to execute the Court of Appeal order May 17, 1991 in accordance with its subsequent interpretation.’

36. It is thus clear to this court that the parties were given liberty to execute the Court of Appeal orders.
37. It is wrong for the applicant to accuse the Court of failing to recognize the Court of Appeal orders by allowing litigation herein to persist, yet he is the person who has continuously been moving the court to the detriment of the other parties.
38. This court finds that the applicant had failed to prove how the Attorney General and the 2<sup>nd</sup> interested party have stood on the way of the implementation of the Court of Appeal orders.
39. It is indeed the applicant who has been interfering with the implementation of the Court of Appeal orders, by continuously filing multiple applications in court.
40. This court notes that this court file number is Civil Appeal No 21 of 1990 and all subsequent applications have been filed using that number. The issue of the destruction of Court file No 22 of 1984 does not arise.

## **Conclusion**

41. For the reasons set out above, this court, while deeply sympathetic of the applicant’s obvious travails in this litigation, finds that the applicant’s remedy lies elsewhere, and there is nothing left for this court to determine. The 1<sup>st</sup> Interested Party was wrongly brought into these proceedings by virtue of a contract between itself and Kenya Urban Roads Authority. It follows that the 1<sup>st</sup> Interested Party’s application is merited and it is allowed as prayed.
42. As for the 2<sup>nd</sup> interested party’s application for provision of security for costs, this court, having determined the applicant’s applications on merits, finds that indeed she has incurred a lot expenses in defence of the plethora applications by the applicant and she would be entitled to security for costs. However, in view of the order herein halting further proceedings, this court does not make any order as to provision for security for costs.

## **Court of Appeal directions**

43. The applicant filed an application dated October 28, 2013 before the Environment and Land Court challenging the validity of this court’s (Oguk J) orders dated September 26, 1990, on the allegation that the said orders had been reviewed by this court’s orders of March 19, 1991. He further sought an order that this court’s order of March 19, 1991 had been overtaken by the Court of Appeal consent order of May 19, 1991 as interpreted on October 23, 1991.
44. The application was dismissed by the ELC Court vide a ruling dated February 19, 2018 but on appeal, the Court of Appeal on November 3, 2022 set aside the said ruling and restored the application for hearing and determination on merits. That matter is not before this court and the court shall say no more on it.



## Orders

45. Accordingly, for the reasons set out above, the court makes the following orders:

1. The Applicant's applications dated January 27, 2022, February 16, 2022 and March 15, 2022 are dismissed with costs to the 2<sup>nd</sup> Interested Party.
2. The 1<sup>st</sup> Interested Party's name is struck out from these proceedings. The Court does not make any orders as to costs for the 1<sup>st</sup> Interested Party.
3. This Court is functus officio upon the Orders of the Court made on diverse dates by the Court - Oguk J; Kasanga Mulwa J; and culminating with the Order Gikonyo J of October 29, 2018 - and the file is, therefore, marked closed.
4. Consequently, the Court does not make any orders as to the provision for security for costs sought by the 2<sup>nd</sup> Interested Party.

Order accordingly.

**DATED AND DELIVERED ON THIS 30TH DAY OF NOVEMBER, 2022.**

**EDWARD M. MURIITHI**

**JUDGE**

### **Appearances**

Mr. Jeremiah Njogu, Applicant in person.

N/A for the Respondent.

Ms Olendo for the 1st Interested Party.

Mr. Mwaro and Ms. Kaiyugira for the 2nd Interested Party.

