



**Oganga & another v Jeremiah (Environment & Land Case  
E002 of 2023) [2023] KEELC 18424 (KLR) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18424 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE E002 OF 2023**

**M SILA, J**

**JUNE 27, 2023**

**BETWEEN**

**EDWARD MAKORI OGANGA ..... 1<sup>ST</sup> PLAINTIFF**

**DAVID OMARI BEKA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**OGETO STEPHEN JEREMIAH ..... DEFENDANT**

**RULING**

(Application for injunction; plaintiffs having entered into an agreement with the defendant to exchange their parcels of land; transfer of title effected to the plaintiffs though defendant yet to obtain transfer from the plaintiffs; plaintiffs now wishing to rescind the agreement on contention that what defendant transferred to them was obtained from proceeds of corruption and is subject of an anti-corruption case; court making order that status quo be maintained pending hearing of the suit).

1. The applicants owned the land parcels West Kitutu/Bogeka/7928 and West Kitutu/Bogeka/8050, whereas the respondent was the registered proprietor of the land parcel Nyaribari Chache/B/B/Boburia/9927. They agreed to exchange their parcels of land. Consequently, on 10 March 2021, the 1<sup>st</sup> applicant became registered as proprietor of the land parcel Nyaribari Chache/B/B/Boburia/9927 in place of the respondent and the respondent relinquished possession of the same. The properties West Kitutu/Bogeka/7928 and West Kitutu/Bogeka/8050 are yet to be transferred to the respondent, though the respondent is in possession of the same.
2. In a plaint filed on 23 February 2023, the applicants commenced this suit against the respondent, seeking orders to nullify the exchange agreement and more or less for parties to be restored back to their previous position. The applicants allege that when entering into the exchange agreement, the respondent did not make full disclosure. They claim that the respondent failed to disclose that



the property Nyaribari Chache/B/B/Boburia/9927 was purchased through proceeds of corruption, and that the property was subject of investigations by the Ethics and Anti-Corruption Commission (EACC). They state that this property Nyaribari Chache/B/B/Boburia/9927 was prohibited in the suit High Court at Nairobi, Miscellaneous Application No. E018 of 2022, which suit was commenced by EACC.

3. Together with the plaint, the applicants filed an application for injunction seeking the following substantive order which is prayer 4 in the application:

That the honourable court be pleased to issue orders of injunction, restraining the defendant/respondent by himself, his agents, employee, servants or any person claiming on his behalf from cultivating, constructing, selling, trespassing, alienating or dealing with LR No. West Kitutu/Bogeka/7928 and I.R No. West Kitutu/Bogeka/8050 in any manner whatsoever pending the hearing and determination of this suit.

4. The application is opposed by the respondent. He admits entering into the exchange agreement of 15 March 2021 but denies that the property Nyaribari Chache/B/B/Boburia/9927 was purchased through proceeds of corruption. He avers that he purchased this property from one Dr. Mathew Kiriago Akama, for a consideration of Kshs. 45,000,000/= on 4 July 2017, and he used money paid to him by one Eric Kipkirui Mutai, who owed him money as a result of some properties that he purchased from the respondent. He subsequently transferred the property to the 1<sup>st</sup> applicant but the two properties that he was to be a beneficiary of, i.e West Kitutu/Bogeka/7928 and 8050 are yet to be transferred to him. He avers that he has however taken over possession and fenced them and is currently doing farming. He has elaborated that the suit filed by EACC was against Mr. Eric Kipkirui Mutai. EACC had first moved to court ex parte, through Miscellaneous Application No. E018 of 2022 to restrain the transfer, subdivision, or disposal of the property. The application was allowed and an order dated 21 April 2022 issued resulting in a caution being registered against the title. He has deposed that he filed an application dated 12 May 2022 to be joined in the said suit and was admitted as interested party. The orders issued on 21 April 2022 lapsed after six months and EACC filed a substantive suit, being Nairobi High Court, Anti-Corruption and Economic Crimes Division, Civil Suit No. E043 of 2022 and another application for prohibitory orders. 5. In a ruling delivered on 23 February 2023, the orders were granted, and the property thus remains under an order of inhibition pending hearing of that suit. He deposes that even if he desired to cancel the exchange agreement, he cannot do so, and the property cannot be transferred to him, due to the orders of inhibition in place. He has deposed that the property has a hostel erected on it and the 1<sup>st</sup> applicant collects rent as he is the one in possession. His view is that the status quo be maintained pending determination of the anti-corruption case.
6. The applicant filed a supplementary affidavit where he inter alia contended that the respondent never took possession of the properties West Kitutu/Bogeka/7928 and 8050, and that it was after service of the suit papers that he proceeded to plant maize on the land. He wonders why the respondent is fighting to keep an undeveloped property leaving out a developed apartment with ready income.
7. I allowed counsel to file submissions and present their arguments over the application which I have taken into account.
8. The dispute here has its genesis in the exchange agreement of 15 March 2021. I have looked at the exchange agreement. The properties West Kitutu/Bogeka/7928 and West Kitutu/Bogeka/8050, are actually not mentioned in that agreement. What is mentioned are the properties West Kitutu/Bogeka/7682 and 7683. I observe that in their pleadings, the applicants averred that the properties West Kitutu/Bogeka/7928 and 8050 arose out of subdivision of the land parcels West Kitutu/Bogeka/7682 and 7683. There are some grey areas here, but I guess the issues will become clear when evidence



is taken during the hearing of the suit. What both parties agree is that the respondent handed over the property Nyaribari Chache/B/B/Boburia/9927 and in return he was to get the properties West Kitutu/Bogeka/7928 and West Kitutu/Bogeka/8050. The title to the property Nyaribari Chache/B/B/Boburia/9927 has already been transferred to the 1<sup>st</sup> applicant and he has possession of the same. I am also persuaded to find that the respondent is the one in possession of the properties West Kitutu/Bogeka/7928 and West Kitutu/Bogeka/8050 and was in possession prior to this suit being filed otherwise the applicants would not have asked for orders of eviction. I am aware that the applicants are now questioning why the respondent exchanged a developed property for what is vacant agricultural properties, but to me, that is neither here nor there, at least within the context of this application.

9. I agree with the respondent that at the moment, even if he accedes to the demands of the applicants, the applicants cannot transfer back the property Nyaribari Chache/B/B/Boburia/9927 to him as there is an inhibition order against the title placed pursuant to orders issued in the anti-corruption suit. I agree with him that given the scenario that has played out, it is best that the parties first await the outcome of that anti-corruption suit and that the current status quo be maintained pending hearing and determination of this case.
10. Given the foregoing, I will order that the current status quo be maintained until this case is heard and determined. The status quo is that the applicants (or 1<sup>st</sup> applicant) are in possession of the land parcel Nyaribari Chache/B/B/Boburia/9927 whereas the respondent is in possession of the land parcels West Kitutu/Bogeka/7928 and West Kitutu/Bogeka/8050. That status be maintained until conclusion of this case. The respondent is at liberty to undertake general farming activities on the land but not to proceed with any constructions until this case is determined, or sell, charge, or in any other way enter into any dealings over the two properties. I will also issue an order of inhibition, to prohibit the registration of any disposition in the registers of the land parcels West Kitutu/Bogeka/7928 and West Kitutu/Bogeka/8050 until this case is concluded. There is already an order issued by another court in respect of the parcel Nyaribari Chache/B/B/Boburia/9927 and I see no need of convoluting matters by issuing another order.
11. The costs of this application will be costs in the cause.
12. Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 27 DAY OF JUNE 2023**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

