



REPUBLIC OF KENYA



**Thangari v Mwaniki; Mwangi (Interested Party) (Civil Appeal  
1 of 2018) [2022] KEHC 15501 (KLR) (18 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15501 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CIVIL APPEAL 1 OF 2018  
CM KARIUKI, J  
NOVEMBER 18, 2022**

**BETWEEN**

**JASON MUTA THANGARI ..... APPLICANT**

**AND**

**RICHARD MWANGI MWANIKI ..... RESPONDENT**

**AND**

**JAMES WAMBUGU MWANGI ..... INTERESTED PARTY**

**RULING**

1. By a notice of motion dated April 22, 2022 under section 68(1) of the *Land Registration Act*, 2012 and section 1A, 1B and 3A of the *Civil Procedure Act*, CAP 21, Laws of Kenya and order 50 rule 6 and order 51 rule 1 and 3 of the *Civil Procedure Rules* 2010 and all other enabling provisions of the law, the applicant herein sought the following orders: -
  - i. Spent
  - ii. Spent
  - iii. That the transfer of the title no. Laikipia/Mutitu Ngoru Block 4/233 (Manguo) in favour of James Wambugu Mwangi (interested party) be cancelled and the same be reverted into the Applicant's name.
  - iv. That the time limited for depositing the sum of kshs. 1,200,000/- be extended to 8<sup>th</sup> March 2022 and the Applicant be deemed to have complied with the court's judgement delivered herein on 3<sup>rd</sup> February 2022.
  - v. That costs of the application be provided for.



2. Which application is supported by the affidavit deponed by Charles Gakuhi Chege and the grounds contained in the face of the application as follows:-

That the Applicant paid to his advocates the balance of the amount ordered to be deposited into court on 25<sup>th</sup> February 2022 which was within the thirty days given in the court's judgement.

- I. The managing partner of the law firm Gakuhi Chege & Associates Advocates was not available to deposit the said amount into the court's account until 7<sup>th</sup> March 2022 which was past the deadline of 5<sup>th</sup> March 2022 given by the court.
  - II. The delay in making the said deposit within thirty days given by court cannot be blamed on the Respondent.
  - III. It is therefore mete and just that the deadline be extended.
3. On March 10, 2022, the honourable court issued an order for stay of transfer of the suit property pending hearing inter-partes of the Applicant's application dated 9<sup>th</sup> March 2022
  4. The order was presented to the land registry at Rumuruti on 1 March 1, 2022 where it was discovered that the land parcel number had an error.
  5. On March 14, 2022, the applicant filed an amended application with the correct land parcel number which was considered and ex parte orders granted.
  6. Although the appellant's advocates had been served on March 14, 2022 with the application dated March 9, 2022 together with the order issued on March 1, 2022, they nevertheless proceeded to register the transfer in favour of the interested party.
  7. The transfer of the suit property on March 15, 2022 when it was being litigated upon offends the doctrine of lis pendens and ought to be cancelled forthwith.
  8. The said transfer was clearly intended to defeat the instant litigation and Nyahururu CMCC no. 216 of 2014 and it is a clear abuse of court process.
  9. It is in the interest of justice that the order sought herein be granted.
  10. The application was opposed by the Respondent vide the replying affidavit of Richard Mwangi Mwaniki dated 13<sup>th</sup> July 2022. It was averred that by 4/3/2022 the Applicant had not complied with the court orders given on 3/2/2022 and therefore the orders stood as vacated and the 2<sup>nd</sup> Respondent proceeded to have the suit land transferred to his name as ordered.
  11. Further, that the Applicant moved the court for stay on the 9/3/2022 after the orders had automatically lapsed and transfer instruments had been presented to the land office for registration of transfer. That the Applicant deposited a sum of kshs. 935,413/- in court on the 8/3/2022 which amount fell short of the kshs. 1,200,000/- ordered by the court and which was outside the 30 days period and no extension of time was granted.
  12. The Respondent deponed that the kshs. 1,200,000/- to be deposited by the Applicant was in respect of the purchase price paid by the 2<sup>nd</sup> Respondent for the purchase of the suit property through a public auction whereas the kshs. 264,587/- deposited by the Applicant on the 9/5/2018 was in respect of an admission of indebtedness by the Applicant in his statement of defence therefore the Applicant is yet to fully comply with the orders of 3/3/2022.



13. It was averred that the 2<sup>nd</sup> Respondent's title deed was regularly issued as there was no stay orders of extension of time granted at the time of presentation of the transfer documents for registration and the Respondents are therefore opposed to the title deed being cancelled through an interlocutory application.
14. The 1<sup>st</sup> Respondent also deponed that he will be greatly prejudiced if the orders sought are granted as huge expenses were incurred in transferring the land on non-failure by the Applicant to comply with clear court orders whereas the Applicant can file a suit for compensation if at all he believes that the suit land was not properly sold to the 2<sup>nd</sup> Respondent and the delay in effecting service of the application dated 9/3/2022 upon my advocates on record has not been explained and they should not be blamed for the same.
15. In addition, the Applicant also filed a supplementary affidavit in response deponed by Charles Gakuhi Chege dated 23<sup>rd</sup> August 2022.

## 16. Applicant's Submissions

17. The Applicant submitted that the honorable court is being called upon to exercise its unfettered discretion in extending the time set in its judgement and in cancelling the interested party' title on the basis of the doctrine of lis pendens.
18. Reliance was placed on order 50 rule 6 of the *Civil Procedure Rules* and *Nicholas Kiptoo Korir Arap Salat vs IEBC & 7 others* [2014] eKLR.
19. It was asserted that the court of appeal while considering the issue of exercise of discretion on account of mistake of counsel in *CFC Stanbic Limited vs John Maina Gitthaiga & another* [2013] eKLR cited in the decision In *Lee F. Muthoga vs Habib Zurich Finance (K) Ltd & another*, Civil Application No. Nai 236 of 2009.
20. In regards to the doctrine of lis pendens, the Applicant submitted that both Respondents knew about the pending litigation but still went ahead to transfer the suit land to the interested party. Reliance was placed on *Naftali Ruthi Kinyua vs Patrick Thuita Gichure & another* [2015] eKLR & *Mawji vs US International University & another* [1976] KLR 185

## 21. Respondents' and Interested Party's Submissions

22. The Respondents submitted that this court lacks jurisdiction to address the Applicant's prayer for cancellation of a title deed. Reliance was placed on Section 4 of the Environment and Land Court, 2011 and In Re Estate of Sabianus Ramba Odero
23. Moreover, they asserted that if the court had jurisdiction to deal with prayer no. 3, the orders sought therein are substantial in nature and cannot be granted in interlocutory application.
24. It was contended that the Respondents acted within the law when they proceeded to execute order no. 2 of the ruling delivered on 3/2/2022 by transferring the land in issue to the 2<sup>nd</sup> appellant. That there were no orders barring them from transferring the land between 4<sup>th</sup> March 2022 and 15<sup>th</sup> March 2022 within which period the transfer documents were presented at the land registry in Rumuruti for registration and a title deed was issued on 15/3/2022.
25. It was argued that the application for stay was only served upon counsel on 14/3/2022 at 2.03 pm by which time the Respondents had already presented transfer forms duly executed by the court's executive officer for registration. Stay orders were issued on 15/3/2022 after the title deed had already



been issued to the 2<sup>nd</sup> appellant and the appellants should not be blamed for the Applicant's indolence in the matter.

26. The Respondents asserted that the Applicant has not satisfied the conditions set out under Section 26 of the [Land Registration Act](#) for cancellation of title deeds.
27. It was contended that prayer no. 4 is overtaken by events as the default clause in order no. 2 has already taken effect and the same is irreversible and that other avenues remain open to the Applicant if he feels aggrieved and interfering with the orders of 3/3/2022 shall cause great injustice to the appellants/ Respondents.

## 28. Analysis and Determination\*\*

29. First and foremost, I must address the issue of jurisdiction as raised by the Respondents who submitted that this court lacks jurisdiction to address the Applicant's prayer for cancellation of a title deed. The Applicant sought that the transfer of the title no. Laikipia/Mutitu Ngoru Block 4/233 (Manguo) in favour of James Wambugu Mwangi (interested party) be cancelled and the same be reverted into the Applicant's name. This would happen where fraudulent or illegal process arises in the matter herein and cancellation comes as a consequence of nullification of the process or act thereof. Otherwise not where the proper process like in the instant case is impeccable.
30. In the [Owners of Motor Vessel 'Lilian S'...vs...caltex oil \(kenya\) Ltd](#) (1989) 1 KLR, the Court held that :-

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no Jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it at the moment it holds the opinion that it is without Jurisdiction.”
31. It is the Respondents' submission that this matter should be heard by the ELC Court which is created under article 162 of [the Constitution](#) which provides;

The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2); Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to; Employment and labour relations; and The environment and the use and occupation of, and title to land.

Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2); The subordinate courts are the courts established under Article 169, or by Parliament in accordance with the Article.
32. To give effect to Article 162 (2) (b) of [the Constitution](#), Parliament enacted the [Environment and Land Court Act](#). It is trite law that jurisdiction is either donated by [the Constitution](#) or statute. section 13 of the [Environment and Land Court Act](#), 2011 provides as follows: -
  - “(1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162 (2) (b) of [the Constitution](#) and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
  - (2) In exercise of its jurisdiction under article 162 (2) (b) of [the Constitution](#), the Court shall have power to hear and determine disputes: -



- a. Relating to environment planning and protection climate issues, land use planning, title tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- b. relating to compulsory acquisition of land;
- c. relating to land administration and management;
- d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land; and
- e. any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*”.

33. Flowing from the statutory provisions and *the Constitution*, the Environment and Land Court is the only court vested with jurisdiction to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.
34. Consequently, this court finds and holds that it is not clothed with the requisite jurisdiction in the circumstances of this case to hear and determine the application in regards to prayer no. 3 and it will therefore down its tools with regards to the said prayer.
35. However, with regards to the other prayer in the instant application, the same is well within the jurisdiction of this court and therefore the court will proceed to determine the same. The applicant sought orders be made that the time limited for depositing the sum of Kshs. 1,200,000/- be extended to 8<sup>th</sup> March 2022 and the Applicant be deemed to have complied with the court’s judgement delivered herein on February 3, 2022.
36. The applicant explained the delay in that he paid to his advocates the balance of the amount ordered to be deposited into court on February 25, 2022 which was within the thirty days given in the court’s judgement. The managing partner of the law firm Gakuhi Chege & Associates Advocates was not available to deposit the said amount into the court’s account until March 7, 2022 which was past the deadline of March 5, 2022 given by the court.
37. Although the applicant advanced the aforementioned explanation, i find that the same has been overtaken by events as indicated by the respondent, as from the evidence the same was never brought to the attention of counsel for the respondents until March 14, 2022 in which time they had executed the default clause of the order given by this court on February 3, 2022.
38. It is my view that a matter overtaken by events cannot be tenable anymore and if it proceeds to success the victory would be pyrrhic. The applicant is called upon to pursue other remedies available to them under the circumstances.

In the circumstances, the court makes orders;

- i. The application dated April 22, 2022 is dismissed as it is wanting in merit.
- ii. Costs to the respondent.



DATED, SIGNED, AND DELIVERED AT NYAHURURU ON THIS 18<sup>TH</sup> DAY OF NOVEMBER 2022.

.....

CHARLES KARIUKI

JUDGE

