



**Nganga & another (Both Suing as the Legal Representative of the Estate of Fredrick
Nganga Kimunya – Deceased) v Mbaitu Co-operative Sacco (Environment &
Land Case 203 of 2016) [2023] KEELC 17940 (KLR) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17940 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 203 OF 2016**

FM NJOROGE, J

JUNE 14, 2023

BETWEEN

GEOFFREY NDUNGU NGANGA 1ST PLAINTIFF

MARY WAMBUI NJENGA 2ND PLAINTIFF

**BOTH SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF
FREDRICK NGANGA KIMUNYA – DECEASED**

AND

MBAITU CO-OPERATIVE SACCO DEFENDANT

RULING

1. Through an ex-parte Notice of Motion dated 27/3/2023, the plaintiff seeks the following orders:
 1. ...spent;
 2. That this Honourable Court be pleased to issue a prohibitory order attaching parcel of land known as Miti Mingi/Mbaruk Block 5/4638 in the name of the Defendant Mbaitu Co-operative Sacco;
 3. That Direct O Auctioneers be appointed to sell by public auction the parcel of land known as Miti Mingi/Mbaruk Block 5/4638;
 4. That the costs of the application be provided.
2. I have perused through the application and found that it is not explicit in the orders that it seeks and the grounds that it sets out in prayer No (2), but one can make out from prayer No 3 that the applicant seeks to have the suit land sold by public auction for some reason.



3. The grounds set out very roughly suggest that this court on 3/6/2019 ordered that the defendant do complete payment of the balance of the purchase price plus a further Kshs 2,000,000/= being the penalty for defaulting on the contractual terms between the parties.
4. The defendant filed a replying affidavit on 12/5/2023 stating as follows: that the parties had a previous arrangement to have the defendant seek a purchaser to purchase LR Number Miti Mingi/Mbaruk Block 5/4638 whereupon the sum of Kshs 2,000,000/= would be remitted to the plaintiff directly; that however despite mediation the plaintiff was very reluctant to remove the restrictions and caution that he had placed on the title prompting the defendant to apply to court as a consequence of which the parties entered into a consent order; that it has been impossible for the defendant to market the suit land since 2019 as the plaintiff has posted a public notice stating that the land is not for sale on the land thus scaring off potential purchasers; that the plaintiff is hence guilty of dishonesty in making the present application; that the notice should be removed from the land; that the defendant already has a potential purchaser but the latter is afraid of committing himself due to the warning notice on the land.
5. I have considered the application and the response. I have not seen any condition on the decree attaching the payment of the Kshs 2,000,000/= and the balance of the purchase price to the sale of the land and no agreement has been attached to the defendant's replying affidavit showing that they had entered into a further understanding that the land be sold and the purchaser do remit the sum of Kshs 2000,000/= or the balance of the purchase price to the plaintiff. Consequently, the defendant's allegations are, though not denied in a supplementary affidavit by the plaintiff, unsubstantiated.
6. There is no dispute that the inhibitions lodged against the title by the plaintiff were removed some time in 2019. The 90 days provided for under limb no (3) of the decree dated 3/6/2019 expired long ago.
7. In this court's view the defendant has no good defence to the plaintiffs' application and the same is granted as prayed in prayers Nos (2) and (3) thereof.
8. Each party shall bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 14TH DAY OF JUNE 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

