



**Muga v Agola & another (Environment & Land Case 64 of 2021)
[2023] KEELC 19000 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19000 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 64 OF 2021**

JM KAMAU, J

JULY 26, 2023

BETWEEN

MATIUS BWANA MUGA PLAINTIFF

AND

PETER OJWANG AGOLA 1ST DEFENDANT

JAMES ODHIAMBO NDEGE 2ND DEFENDANT

RULING

1. On March 25, 2022, I delivered the following Decision: -
 1. That the Declaration be and is hereby issued that the Plaintiff is the registered and/or lawful owner of Lr. No. North Mugirango/ Magwagwa II/1089.
 2. That an order of Eviction and Demolition of structures erected on the suit land by the Defendants is hereby issued.
 3. That a permanent injunction restraining the Defendants by themselves, agents, servant and/or anyone claiming under the Defendants, from re-entering trespassing onto building structures, cultivating, interfering with and/or in any other manner whatsoever dealing with the suit land, that is LR. No. North Mugirango/Magwagwaii/1089.
 4. That the Plaintiff is awarded costs.
 5. That the prayers for General Damages is disallowed for want of proof.
 6. That the court to dismiss the Defendants' counterclaim with costs.
2. On March 8, 2023 the Decree Holder commenced the process of execution.



3. Before me is an Application through the firm of Moerwa Omwoyo & Co. Advocates on behalf of the Defendants/Applicants dated July 14, 2023 for the following orders: -
 - a. That this Honorable Court be pleased to stay the execution of the order issued on May 11, 2023 against the Defendants/Applicants, pending inter partes hearing and determination of this Application.
 - b. That the Honorable Court be pleased to set aside the entire ex parte proceedings herein and Judgment/Decree.
4. The Grounds supporting the Application are mainly that the previous firm of Advocates for the Defendants i.e. Gogi & Associates never advised the Defendants that the case was now in Nyamira Court and when the case was coming up for hearing, the Defendants have a formidable case against the Plaintiff and that the case raises very triable issues. They also plead that the suit should have been determined on merit. Finally, they claim that the Respondent would suffer no prejudice should the case be reopened and that they were condemned unheard. The Defendants/Applicants also claim that they have entered into an Agreement to buy the suit property North Mugirango/Magwagwaii/1089 and have already paid Kshs. 122,000/= out of an agreed consideration of Kshs. 250,000/=. A Sale Agreement executed on a date that is not visible and said to have been witnessed by one Geoffrey E. Wesonga, Advocate and Commissioner for oaths is attached together with letters from 2 Assistant Chiefs about 3 months after the date of Judgment.
5. In the first place, the firm of Moerwa Omwoyo and Co. Advocates is not properly on record since the said firm has come to replace the firm of Gogi & Associates Advocates which has been on record since after Judgment was delivered on March 25, 2022, on which date Ms. Gogi was in court online for the Defendants. Leave has not been sought to do so contrary to Order 9 Rule 9 of the Civil Procedure Rules.
6. Secondly, I have not been convinced that the Defendants were not aware of the Hearing date and that the sins herein are of Gogi & Associates because Ms. Gogi was in court on October 8, 2019 before Lady Justice Jane Onyango when Ms. Gogi appeared for the Defendants and when the Hearing of the case commenced. She also appeared on November 21, 2019, March 5, 2020, June 4, 2020, July 15, 2020, September 28, 2020, January 26, 2021, July 14, 2021, January 27, 2021 after the matter was transferred to Nyamira and Ms. Gogi requested for a further Hearing date by which time 2 of the Defendant's witnesses had already been heard in Kisii. On February 9, 2022, Ms. Gogi put on the witness box the 3rd Defence Witness and closed her case. Defendants' Written Submissions for the Defendants were filed on March 14, 2022 and Judgment delivered to the parties on March 25, 2022 when Ms. Gogi was present in court. It can therefore not be true that after the case was transferred to Nyamira the Defendants were never advised of the ongoings. It is also not true that the proceedings were ex-parte. Mr. Omwoyo, who moved the court for the orders sought herein should have perused the court file before filing his Application which is full of falsehoods which is tantamount to engaging in abuse of the court process. Going now to the evidence of payment of consideration the same cannot be a good ground of reopening the case because the alleged agreement was entered into after Judgment and cannot be used to set aside the said Judgment. The alleged agreement is not signed by the Plaintiff, Decree Holder herein and the place for his Identify Card number is blank and I do not understand what Mr. Wesonga was witnessing. This court also advises the young lawyer in the name of Mr. Wesonga that blank Agreements should not be witnessed since anything can be inserted in the blank space and land the lawyer into some professional catastrophes. The alleged sale agreement is quite suspicious and is not worth the paper it is written on.



7. Secondly Mr. Wesonga, Sale Agreements are witnessed by a practicing Advocate and not a Commissioner for Oaths. I would equally wish to advice Mr. Amos O. Osuga and Mr. Bernard Owour Owenga Senior Assistant Chief, Bonyengwe II Sub-location and Assistant Chief Misombi Sub-location to leave the work of witnessing Sale Agreements to practicing Advocates and confine their responsibilities to what the *Chiefs' Act* provides. I feel that the Respondents herein sought letters from the 2 Assistant Chiefs both of which came after the Decree Holder had commenced execution of his Judgment in order to hoodwink the court and make it lean towards their friends, the Defendants. My advice to them is that they should keep off such transactions because they are by so doing taking sides and as civil servants they ought not to take sides. I also wish to inform them that I shall not lean towards their otherwise ill resolve. How can the Decree Holder herein belong to 2 sub locations so that 2 Assistant Chiefs are called upon to witness an Agreement which has also allegedly been witnessed by a qualified Advocate of good standing? The upshot of the above is that the Application dated July 14, 2023 is hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 26TH DAY OF JULY 2022.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiff's Counsel: N/A

Defendants' Counsel: Ms. Juma holding brief for Mr. Omwoyo

