



Kabuthi v Kabuthi; Kabuthi & another (Interested Parties) (Environment & Land Case 393 of 2013) [2023] KEELC 18739 (KLR) (13 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18739 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 393 OF 2013**

JM MUTUNGI, J

JULY 13, 2023

BETWEEN

KARIMI KABUTHI PLAINTIFF

AND

MWAI KABUTHI DEFENDANT

AND

JOYCE KAGUU KABUTHI INTERESTED PARTY

JANE MUMBI KABUTHI INTERESTED PARTY

RULING

1. By an application dated October 5, 2022 expressed to be brought under sections 1A, 3A and 80 of the [Civil Procedure Act](#) and order 10 rule 3 of the [Civil Procedure Rules](#) the 1st and 2nd intended interested parties seek the following orders:-
 1. Spent.
 2. That this honourable court be pleased to enjoin the applicants herein as interested parties in this suit.
 3. That this honourable court be pleased to issue restrictions on land parcel Number Mutira/Kaguyu/6726 and Mutira/Kaguyu/6727 pending the hearing and determination of this application.
 4. That this honourable court be pleased to review and/or set aside the decree dated March 5, 2013 and include the interested parties as part of the trust herein.
 5. Costs.



2. The application is grounded and supported on the grounds set out on the body of the application and the affidavit sworn in support by Joyce Kaguu Kabuthi dated October 5, 2022. Inter alia the applicants aver they are siblings of the plaintiff/respondent; that the plaintiff failed to disclose to the court that the defendant (Mwai Kabuthi) held land parcel Mutira/Kaguyu/145 in trust for all the children of the late Kabuthi Karii who included the applicants; that the applicants were left out in the subdivision of their father's land while they were entitled to a share; that the original land parcel Mutira/Kaguyu/145 has been subdivided to create parcels Mutira/Kaguyu/6726 & 6727; that the applicants stand to lose their inheritance if the land is sold to third parties; that the plaintiff failed to serve the applicants and/or notify them of the existence of the instant suit; and hence the applicants aver it was only fair and just to have the decree reviewed to include them.
3. In opposition to the application for joinder, the plaintiff filed a replying affidavit dated November 21, 2022. The plaintiff averred that the application by the intended interested parties was frivolous as the applicants were concealing material facts to the court. The plaintiff averred that the applicants were aware of the suit since inception in 2013 and attended all court hearings including the date judgment was delivered on March 5, 2014. The plaintiff deponed that following the judgment, the defendant appealed to the Court of Appeal against the judgment *vide* Nyeri CA No 51 of 2014 but the appeal was dismissed and the decision of Kerugoya ELC No 393 of 2013 was upheld. He averred that the decree of the court had been executed and the suit land subdivided in implementation of the judgment and asserted there was no basis to have the case reopened. The plaintiff further by a supplementary affidavit sworn on February 27, 2023 affirmed that land parcel Mutira/Kaguyu/6726 which was registered in his name after execution of the Judgment had been subdivided into three (3) portions which had been transferred to third parties as evidenced in the certificates of official searches annexed as "KKI".
4. The parties were directed to canvass the application by way of written submissions on November 2, 2022. The plaintiff filed his submissions March 21, 2023 and even though the applicants were given extended time to file their submissions within 14 days of April 19, 2023 when the court reserved ruling, the applicants did not file any submissions.
5. I have considered the application, the affidavits sworn in support and in opposition, and I have considered the submissions filed by the plaintiff/respondent. The present suit was concluded on March 5, 2014 when the court delivered its judgment in favour of the plaintiff. The appeal by the defendant was dismissed by the Court of Appeal on March 1, 2017. The plaintiff depones that the applicants who are his sisters knew about the case from inception and that they used to accompany him to court including the day of judgment. The applicants did not apply to be joined in the suit when it was ongoing. This court having heard the suit and having rendered a judgment that was appealed against in the Court of Appeal became *functus officio*. The Court of Appeal rendered its judgment whereby it dismissed the appeal. The judgment and decree of this court was consequently executed and the land the subject matter of the suit was subdivided in accordance with the terms of the judgment. The plaintiff has further subdivided his portion of land LR No Mutira/Kaguyu/6726 to create land parcel Mutira/Kaguyu/6739, 6740 and 6741 which he has transferred to third parties. The land the subject of the suit LR No Mutira/Kaguyu/145 has ceased to exist following execution of the judgment and further activities affecting the land.
6. In this matter there was a valid judgment of the court that was upheld on appeal. The judgment has been executed and this court cannot properly revisit the judgment and/or the proceedings. The court did its work, rendered a judgment on the basis of the pleadings and evidence, and cannot recall the judgment to consider it afresh. The judgment has been tested on appeal and has been upheld. The court is simply *functus officio* and there is no way it can entertain the instant application.



7. There is every reason to believe the applicants were aware of the suit before this court and the appeal that stemmed from the judgment. That was the time they ought to have applied to be joined as parties either in the suit or in the appeal if they considered they had any interest in the subject matter of the suit. It is now too late in the day. They are in a manner of speaking seeking to bolt the stable door after the horse has bolted.
8. Having reached the conclusion that the court is functus officio, the court lacks the jurisdiction to entertain the applicants application for joinder as interested parties and consequently the other prayers for placing inhibitions and/or restrictions on land parcels Mutira/Kaguyu/6726 and 6727, and to review and/or set aside the decree/judgment dated March 5, 2014 would be inapplicable. The applicants application dated October 5, 2022 has no merit and it is hereby ordered dismissed.
9. On account of the parties being members of the same family, each party will bear their own costs of the application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 13TH DAY OF JULY 2023.

J. M. MUTUGI

JUDGE

