



REPUBLIC OF KENYA



**Laboso & 34 others v Mageto & 3 others (Environment & Land Case
8 of 2023) [2023] KEELC 20180 (KLR) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20180 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 8 OF 2023**

**EM WASHE, J
SEPTEMBER 25, 2023**

BETWEEN

PAUL LABOSO 1ST APPLICANT
CHRISTOPHER KOECH 2ND APPLICANT
KIPLANGAT BOR 3RD APPLICANT
JOHANA RUTO 4TH APPLICANT
JOSEPH RONO 5TH APPLICANT
JOSEPH KIPKEMOI 6TH APPLICANT
KIPROTICH SIGIRA 7TH APPLICANT
PHILIP CHERUIYOT 8TH APPLICANT
PHILIP SIGIRA 9TH APPLICANT
SAMWEL CHERUIYOT SIGIRA 10TH APPLICANT
JOHANA CHEPKWONY 11TH APPLICANT
KIPTANUI KORIR 12TH APPLICANT
JOSEPH K.LANGAT 13TH APPLICANT
RICHARD KIPLANGAT 14TH APPLICANT
ANTONY.K.LANGAT 15TH APPLICANT
JEREMIA KIRUI 16TH APPLICANT
JOHANA BARTAA 17TH APPLICANT
JOHANA.K.RONO 18TH APPLICANT
JOHANA TANUI 19TH APPLICANT



JOSEPH KORONYA	20 TH APPLICANT
PHILIP TANUI	21 ST APPLICANT
MATHIUS MARITHIM	22 ND APPLICANT
PHILIP K. NGETICH	23 RD APPLICANT
JOSEPH MARITIM	24 TH APPLICANT
SAMUEL K.BUR	25 TH APPLICANT
ANTHONY KIRUI	26 TH APPLICANT
JOHANA LANGAT	27 TH APPLICANT
SAMUEL CHERUIYOT	28 TH APPLICANT
PHILIP LANGAT	29 TH APPLICANT
CHARLES.K.MUTAI	30 TH APPLICANT
CHARLES TANUI	31 ST APPLICANT
RONALD NGENO	32 ND APPLICANT
SAMUEL KORIR	33 RD APPLICANT
JULIUS KORIR	34 TH APPLICANT
ALFRED MUTAI	35 TH APPLICANT

AND

WILSON JACK MAGETO	1 ST RESPONDENT
DISTRICT LAND REGISTRAR, TRANSMARA	2 ND RESPONDENT
SHANTILAL KANJI SHAH	3 RD RESPONDENT
MARA COFFEE MILLERS	4 TH RESPONDENT

RULING

1. The Plaintiffs herein (hereinafter referred to as “the Applicants”) filed a Notice of Motion Application dated 28th February 2023 (hereinafter referred to as “the present Application”) seeking for the following Orders;-
 - i. This Application be certified urgent and given an early date due to the nature of the issues therein.
 - ii. The Court grant leave to the Applicants to enjoin Shantilal Kanji Shah and Mara Coffee Millers Limited as the proposed 3rd and 4th Defendants.
 - iii. This Honourable Court be pleased to grant a temporary injunction restraining all the Respondents herein whether by themselves, their agents and or servants from dealing , interfering, alienating or otherwise disposing off the suit property known as



L.R.No.Transmara/Moyoi/195 situated in Angata Barakoi Ward pending the hearing and determination of this Application.

- iv. This Honourable Court be pleased to grant a temporary injunction restraining all the Respondents herein whether by themselves, their agents and or servants from dealing , interfering, alienating or otherwise disposing off the suit property known as L.R.No.Transmara/Moyoi/195 situated in Angata Barakoi Ward pending the hearing and determination of this Application.
 - v. The draft Amended Plaint annexed herein, be deemed properly filed upon payment of requisite court fees.
 - vi. Summons to enter appearance be issued against the 3rd and 4th proposed Defendants.
 - vii. Costs of this Application be provided for.
2. The prayers sought for hereinabove are premised on the grounds contained in the body of the present application as well as the Supporting Affidavit of the 1st Plaintiff/Applicant sworn on the 28th of February 2023 and can be summarised as follows;-
- a. The Applicants are claiming to be the residents and/or the beneficial owners of the land which is now registered as L.R.No.Transmara/Moyoi/195 in the name of the 1st Respondent.
 - b. The Applicants plead that the purported alienation and creation of the Title known as L.R.No.Transmara/Moyoi/195 in which they reside on is illegal, unlawful and fraudulent thereof.
 - c. As a result of the illegal, unlawful and fraudulent actions by the 1st and 2nd Respondents herein, the Applicants instituted these proceedings to challenge the legality of the creation and registration of the property known as L.R.No.Transmara/Moyoi/195.
 - d. Similarly, the Applicants proceeded to place a caution on the property known as L.R.No.Transmara/Moyoi/195 – to prevent any further dealing on the said property in order to protect their interests and rights thereof.
 - e. Despite the registration of the Caution by the Applicants on the register of the property known as L.R.No.Transmara/Moyoi/195, the 1st Respondent wrote a letter to the 2nd Respondent requesting the Caution to be removed as he intended to dispose of the same to the 4th and 5th Intended Respondents herein.
 - f. The Applicants becoming aware of this intention by the 1st Respondent proceeded to apply for a temporary injunction stopping the 1st and 2nd Respondents whether by themselves, their agents and servants from dealing, interfering, alienating or otherwise disposing of the suit property known as L.R.No. Transmara/Moyoi/195.
 - g. Despite this Honourable Court granting the temporary injunction orders in favour of the Applicants, the 1st and 2nd Respondents in total disregard of valid Court Orders proceeded to transfer the property known as L.R.No.Transmara/Moyoi/195 into the names of the proposed 4th and 5th Defendants thereof.
 - h. Upon successful registration of the property known as L.R.No.Transmara/Moyoi/195 into the names of the proposed 4th and 5th Intended Respondents, the 5th Defendant has now embarked on a process of changing the Land User from agricultural to commercial and/or industrial use.



- i. The Applicants state that the actions by the Respondents interfere with their rights to the said land, their occupation thereof and therefore the said title known as L.R.No.Transmara/Moyoi/195 should be declared null and void.
 - j. Further to that, the Applicants have pleaded that the 4th and 5th Intended Respondents have in an effort to hinder them from accessing the land within the property known as L.R.no.Transmara/Moyoi/195 built a police station and any attempts to access their ancestral homes is met with malicious prosecutions before the Kilgoris Chief Magistrates Court.
 - k. In essence therefore, the Applicants plead with this Honourable Court to grant the prayers sought in the present Application.
3. The present Application was then served on all the Respondents who respondent as follows;-
- The 1st Respondent filed a Replying Affidavit sworn on the 28th of April 2023 opposing the present Application on the following grounds;-
- i. The 1st Respondent began by stating that he is the lawful registered of the property known as L.R.No.Transmara/Moyoi/195 after he inherited it from his deceased father George Hezron Mageto.
 - ii. Upon having the title of L.R.No.Transmara/Moyoi/195 in the 1st Respondent's name, the same was transferred to the proposed 4th and 5th Defendants through a valid sale.
 - iii. Consequently, the allegation that the applicants are the beneficial owners of the property known as L.R.No.Transmara/Moyoi/195 is not true.
 - iv. The 1st Respondent further pleaded that there was no collusion, or illegal and unlawful acts that were undertaken to result to an overlap of the property known as L.R.No.Transmara/Moyoi/195 over the portion which the Applicants reside and/or are in possession.
 - v. Regarding the caution lodged by the Applicants, the 1st Respondent states that the same was placed unlawfully and was not justification thereby interfering with his legal rights.
 - vi. The 1st Respondent stated that he was not aware of any conservatory orders that were issued in relation to the property known as L.R.No.Transmara/Moyoi/195 as alleged by the Applicants.
 - vii. The 1st Respondent pleaded that the property known as L.R.No.Transmara/Moyoi/195 has never been occupied and/or belonged to the Applicants since its creation and registration over 25 years ago.
 - viii. The 1st Respondent further pleaded that the prayers in the present Application are similar to those in an earlier application which was determined through a ruling dated 4th February 2019 and therefore the present application is an abuse of the Court process.
 - ix. The 1st Respondent in reference to Paragraph 11 and 12 of the Applicant's Supporting Affidavit stated that the allegations of him being an outsider and non-resident of the area was unjustified in view of the legal rights bestowed on him through the registration of the title to the property known as L.R.No.Transmara/Moyoi/195 in his name.
 - x. The 1st Respondent denied any intention of constructing and/or using the police station located on the property known as L.R.No.Transmara/Moyoi/195 to harass and/or deny the Applicants their ownership right over their properties.



- iv. Consequently therefore, if the interim orders sought in the present application are granted, then such orders will be in contravention with the spirit and express provisions of section 24,25 and 26 of the Land Registration Act, No.12 of 2012.
 - v. Further to that, the proposed 4th and 5th Defendants denied the fact that the Applicants are residents in the property known as L.R.No.Transmara/Moyoi/195 at any given time as alleged.
 - vi. The proposed 4th and 5th Defendants stated that the title over the property known as L.R.No.Transmara/Moyoi/195 has been in existence for a long period of time within which the Applicants did not challenge the ownership of the same until 2018 when this suit was filed.
 - vii. The proposed 4th and 5th Defendants therefore believe that this suit and/or present Application is purely based on medieval tribal overtones.
 - viii. Lastly, the proposed 4th and 5th Defendants stated that the actions of the police to arrest and charge the Applicants are beyond their control as this is the mandate of police and Director of Public Prosecution.
8. Once all the parties filed their responses to the present Application, parties were directed to file their submissions.
 9. In compliance with the above directions, the parties filed their submissions and upon this Honourable Court going through the pleadings herein, the issues for determination in the present application can be summarised as follows;-

Issue No. 1- Is this application res-judicata to the one dated 4th february 2019?

Issue No. 2- should the proposed 3rd and 4th defendant be joined in these proceedings?

Issue.no.3- Is the applicant entitled to the prayers sought in the present application?

Issue.no.4- who bears the cost of the present application?
 10. This Honourable Court having spelt out the issues for determination in the present Application, the same will now be discussed herein below;-

Issue No. 1- Is This Application Res-judicata to The One Dated 4th February 2019?

11. The 1st respondent in his replying affidavit sworn on the 28th April 2023 has raised an issue that the Applicants had filed a similar application on the 4th of February 2019.
12. The said Application filed on the 4th of February 2019 was heard substantively and the Honourable Court pronounced its judgement on the 30th November 2021.
13. Consequently, this present Application is Res Judicata to the one dated 4th February 2019 and should be dismissed thereof.
14. The Applicants on the other hand have deponed that the Learned Judge did not address the issue of joinder of the proposed 3rd Defendant even though it was an issue for determination.
15. Further to that, during the pendency of the said Application dated 4th February 2019, the proposed 4th Defendant proceeded to dispose of the property known as L.R.No.Transmara/Moyoi/195 and therefore the earlier application did not include the proposed 5th Defendant who has not been brought in by the present application.



16. The point of departure in determining this issue is to look at the Application dated 4th February 2019 and evaluate the prayers and/or facts that were contained therein.
17. The prayers contained in the Application dated 4th of February 2019 are reproduced hereinbelow for ease of reference:-
 - i. That this Honourable Court be pleased to certify this Application as urgent and order that service be dispensed with in the first instance.
 - ii. That this Honourable Court be pleased to grant a temporary injunction restraining the Respondents whether by themselves, their agents and/or servants or employees or persons intending to purchase the suit property from ploughing, dealing, interfering, alienating or otherwise disposing of the suit property parcel Number Transmara/Moyoi/195 situated in Angata Barakoi Ward pending the hearing and determination of this Application.
 - iii. That this Honourable Court be pleased to grant a temporary injunction restraining the Respondents whether by themselves, their agents and/or servants or employees or persons intending to purchase the suit property from ploughing, dealing, interfering, alienating or otherwise disposing of the suit property parcel Number Transmara/Moyoi/195 situated in Angata Barakoi Ward pending the hearing and determination of this Application.
 - iv. That the costs of this Application be in the cause.
18. The Application dated 4th February 2019 was duly served on the Respondents who duly filed their Replying Affidavits and submissions.
19. Despite the lengthy period of time, the Ruling was pronounced on the 30th of November 2021.
20. According to the Applicants submissions in the Application dated 4th February 2019 filed on the 4th of March 2019, the main issue for determination was whether or not the Applicants deserved an injunction against the Respondents therein.
21. This issue was extensively canvassed by the Learned Judge in the Ruling dated 30th of November 2021 and the outcome therein was that the status quo on the ground should be maintained.
22. In the present Application the Prayer 3 and 4 are pleaded as follows:-
 - iii. This Honourable Court be pleased to grant a temporary injunction restraining all the Respondents herein whether by themselves, their agents and or servants from dealing , interfering, alienating or otherwise disposing off the suit property known as L.R.No.Transmara/Moyoi/195 situated in Angata Barakoi Ward pending the hearing and determination of this Application.
 - iii. This Honourable Court be pleased to grant a temporary injunction restraining all the Respondents herein whether by themselves, their agents and or servants from dealing , interfering, alienating or otherwise disposing off the suit property known as L.R.No.Transmara/Moyoi/195 situated in Angata Barakoi Ward pending the hearing and determination of this Application.
23. A plain reading of Prayer No. 3 and 4 in the present Application confirms that these are the same orders that had been pleaded in the earlier application dated 4th February 2019.



24. Consequently, this Honourable Court is of the considered view that Prayers 3 and 4 in the present Application are Res-Judicata to prayers 2 and 3 in the Application filed on the 4th February 2019 and determined on the 30th of November 2021.
25. Prayers No.3 and 4 in the present Application have been answered by the Status Quo order issued on the 30th of November 2021.
26. It is important to point out the orders of status quo issued on the 30th of November 2021 are binding and/or affect any other person that will derive their ownership from a sale, transfer and/or alienation by the 1st Respondent herein.

Issue No. 2- Should The Proposed 3rd and 4th Defendant Be Joined In These Proceedings?

27. The second issue for determination is whether or not the proposed 4th and 5th Defendants should be joined in this proceeding as Defendants.
28. The Applicants have submitted that the proposed 4th and 5th Defendants are the subsequent registered owners having been transferred the property known as L.R.No.Transmara/Moyoi/195 by the 1st Respondent through the offices of the 2nd and 3rd Respondents.
29. Consequently therefore, the said proposed 4th and 5th Defendants are necessary parties in this suit and should accordingly be joined.
30. The Applicants in their Supporting Affidavit sworn on the 28th of February 2023 have annexed a Certificate of Search which confirms that the proposed 5th Defendant is the current registered owner of the property known as L.R.No.Transmara/Moyoi/195.
31. This prayer of joinder is similar to another application made by the 1st Respondent on the 10th of September 2018.
32. The main ground which the 1st Respondent adduced for the joinder of the proposed 4th Defendant was that the property known as L.R.No.Transmara/Moyoi/195 had been lawfully sold off to the proposed 4th Defendant through an Agreement For Sale dated 29th June 2017.
33. The 1st Respondent therefore pleaded that the proposed 4th Defendant should be joined in this proceeding as any outcome thereof will directly affect the proprietary rights of the proposed 4th Defendant.
34. The 1st Respondents application was indeed opposed by the proposed 4th Interested Party on the ground that the purported Agreement For Sale dated 29th June 2017 was terminated and their was no interest whatsoever over the said property known as L.R.No.Transmara/Moyoi/195 as alleged.
35. In the Ruling pronounced on the 21st of November 2021, the Honourable Court on Page 7 made a finding that the 1st Respondent's application was not merited as the proposed 4th Defendant had clearly stated that it was not interested in the said property.
36. However, in the present application, the Applicants have again sought to have the proposed 4th and 5th Defendants/Respondents to be joined in this suit based on the Certificate of Search dated 3rd of February 2023 confirming that the proposed 5th Defendant is the registered owner of the property known as L.R.No.Transmara/Moyoi/195.



37. In the Affidavit in Reply by the proposed 4th and 5th Respondents sworn on the 5th May 2023, the fact that the property known as L.R.No.Transmara/Moyoi/195 is registered in the name of the 4th proposed Defendant has not been denied.
38. What the proposed 4th and 5th defendants have pleaded is that the applicants have not demonstrated any legitimate cause of action against to warrant the joinder their joinder.
39. Order 1 rule 10 (2) of the *Civil Procedure Rules*, 2010 reads as follows;-
- “The Court at any stage of the proceedings , either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant , be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
40. According to the provisions of order 1 rule 10 (2) of the *Civil Procedure Rules*, 2010, the question for determination is whether the proposed 3rd and 4th Defendants are necessary parties.
41. The answer to this question is to the positive because the proposed 5th defendant’s title is directly being challenged by the applicants.
42. The issues raised in this suit include the validity of the title known as L.R.No.Transmara/Moyoi/195 well as the question of whether the proposed 5th Defendant is in occupation of the said property or it’s the Applicants on the ground.
43. These issues cannot be resolved without the participation of the registered owner of the property known as L.R.No.transmara/Moyoi/195 who is the 5th proposed Defendant.
44. In addition to that, if this Honourable Court is to issue any orders affecting the validity of the property known as L.R.No.transmara/Moyoi/195 and/or who is in possession of the same, the Article 50 of the Kenyan Constitution, 2010 directs this Honourable Court to ensure that every party affected must be given a fair hearing before such a determination is arrived at.
45. In essence therefore, this Honourable Court is of the view that the proposed 5th Defendant Mara Coffee Millers Limited is a necessary party in this suit and should be joined forthwith.

Issue.no.3- Is the applicant entitled to the prayers sought in the present application?

45. Based on the determinations in Issue No. 2 and 3 hereinabove, this Honourable Court is of the considered view that the only successful prayer is the one regarding joinder of the proposed 5th Defendant only.

Issue.no.4- Who bears the cost of the present Application?

46. On the issue of costs, the same will await the outcome of the substantive suit.

Conclusion

47. In conclusion therefore, the Honourable Court hereby makes the following Orders as appertains the Notice of Motion Application dated 28th February 2023;-
- A. The applicants prayers no. 3 & 4 in the application dated 28th February 2023 are hereby denied.



B. The proposed 5th defendant known as mara coffee millers limited be and is hereby joined as the 4th defendant.

C. The applicants are granted 14 days from the date of pronouncement of this ruling to prepare, file and serve the amended plaint thereof.

D. Costs of the present application will abide the outcome of the substantive suit.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 25TH OF SEPTEMBER 2023.

EMMANUEL.M.WASHE

JUDGE

In The Presence Of :

Court Assistant: Mr. Ngeno

Advocates For The Applicants: Mr.bosek

Advocates For The Respondent: Dr.momanyi For 1St Respondent

Mr. Myamurongi For The Proposed 4Th & 5Th Defendants.

