



Ndichu (The Legal Representative of the Estate of John Ndichu Ngeru (Deceased)) v Mbugua (The Legal Representative of the Estate of Dominic Gathea Mbugua) & 9 others (Environmental and Land Originating Summons 637 of 2014) [2025] KEELC 1202 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1202 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 637 OF 2014
CA OCHIENG, J
MARCH 13, 2025

BETWEEN

GEORGE NJENG'E NDICHU PLAINTIFF
THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOHN NDICHU NGERU
(DECEASED)

AND

CHRISTOPHER NDUNGU MBUGUA (THE LEGAL REPRESENTATIVE OF
THE ESTATE OF DOMINIC GATHEA MBUGUA) 1ST DEFENDANT
NAYLOR SHIVACHI MUKOFU 2ND DEFENDANT
DAVID CHEGE MBUGUA 3RD DEFENDANT
ABAD RASHID 4TH DEFENDANT
DILAWAR RASHID 5TH DEFENDANT
TEREEK MOHAMOOD 6TH DEFENDANT
FAROOQ ANWAR 7TH DEFENDANT
SEENAT ANWAR 8TH DEFENDANT
ZARINA BEGUM 9TH DEFENDANT
NASEEM ANWAR 10TH DEFENDANT

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated the 17th September 2024 where he seeks the following orders:



- a. That the 1st, 2nd and 3rd Respondents be ordered to surrender the original title deed for Land Parcel LR No. 209/223/6 to the Plaintiff's/Applicant's advocates within 7 days of the order of the court to facilitate execution of the decree herein.
 - b. That in default the 1st, 2nd and 3rd Respondents be summoned to show cause why they should not be punished for contempt of court for refusing to obey the court order.
 - c. That the court be pleased to issue such other or further orders as may be necessary to facilitate execution of the decree herein.
 - d. That the 1st, 2nd and 3rd Respondents do bear the costs of this application.
2. The application is premised on grounds on the face of it and the supporting affidavit of George Njunge Ndichu sworn on 17th September 2004. He contends that following this court's Decree dated the 15th June 2023, it ordered for the cancellation of the 1st, 2nd and 3rd Respondents title over LR No. 209/223/6 and directed that the said title be transferred to the estate of John Ndichu Ngeru (deceased). He explains that he requires the original title to facilitate implementation of the Decree but despite his advocates writing to the 1st- 3rd Respondents' requesting for production of the said title, they have refused to surrender it.
 3. In opposition to the application, the 2nd Respondent filed a replying affidavit sworn on 16th October 2024 contending that the issue of custody of the title to the suit land was not canvassed during hearing of the suit thus the allegation of contempt is baseless. He insists that he has no capacity to cancel and / or register titles in the names of the Applicant as it is the mandate of the Land Registrar. Further, that the Applicant failed to prove the elements required to make the case for civil contempt against him.
 4. The 1st and 3rd Respondents failed to file their responses to oppose the instant application.
 5. The instant Notice of Motion was canvassed vide written submissions.

Analysis and Determination

6. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether the Applicant is entitled to the orders as sought.
7. The Applicant in his submissions, referred to the Judgment of this Court and contended that this Court has inherent jurisdiction to order the 1st to 3rd Respondents to surrender the original title to facilitate execution of its orders.
8. While the 2nd Respondent in his submissions contended that the title to the suit land is not in his possession. He argued that while the court cancelled the title in possession of the 1st to 3rd Respondents, it did not order them to surrender the original to the Applicant. Further, that if the court determines the question, it would be reopening the case yet parties are bound by their pleadings and the court has no jurisdiction to reopen the case. He disputed being in contempt of the orders of the court and insisted that the Applicant failed to demonstrate any efforts he had made, to transfer the suit parcel pursuant to orders of the court. To support his averments, he relied on the following decisions: *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR; *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eKLR; *Independent Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others* [2014] eKLR; *Gatharia K. Mutikika v Bharini Farm Ltd* [1985] KLR; *Cecil Miller v Jackson Njeru & Another* [2017] eKLR and *Kenya Commercial Bank Ltd v Alcon Holdings Limited* [2021] eKLR.



9. It is not in dispute that there is a judgment of this court delivered on 15th June 2023, wherein the court issued orders cancelling registration of the 1st to 3rd Respondents title to LR No. 209/223/6 and directed that the same be registered in the name of the Estate of John Ndichu Ngeru (deceased). Further, it is not in dispute that the 1st to 3rd Respondents are yet to surrender the title to the Applicant to enable him implement the Court's Decree.
10. The Applicant alleges that the 1st to 3rd Respondents have refused to surrender the title, to enable him comply with the Decree of this court. He annexed a letter dated the 20th November 2023 addressed to the 1st Respondent by his advocates on record, seeking that the original title to the suit parcel be sent to the said advocates to facilitate compliance with this court's aforementioned orders issued on 15th June 2023. The 2nd Respondent claims he does not have the original title and is not in contempt of the court order. To my mind, noting that the 1st and 3rd Respondents, did not oppose the instant application, I find that he is not being candid.
11. Be that as it may and since the Applicant is merely seeking to execute the Judgment and consequent Decree of this Court and enjoy the fruits of the said judgment, in the interest of justice and in exercising the inherent power of this court, I direct the 1st to 3rd Respondents to avail the copy of the original title to the Applicant's Advocates, within fourteen (14) days from the date hereof, failure of which, the Land Registrar is directed to dispense with the surrender of the Original Title of LR No. 209/223/6 in effecting Transfer of the said land to the estate of John Ndichu Ngeru (deceased).
12. Further, the Deputy Registrar, Environment and Land Court to facilitate the execution of the transfer documents, if need be.
13. In the circumstances, I find the Notice of Motion application dated 17th September 2024, merited and will allow it with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13th DAY OF MARCH 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Ms Kemunto for 2nd Respondent

Oduor for Applicant

Court Assistant: Joan

