



**Cherere (Suing as the Administrator of John Cherere Mwangi - Deceased) v  
Githumbi (Sued as the Administrator of the Estate of Kithumbi Kichuhi - Deceased)  
& 2 others; Kandenge & 8 others (Intended Defendant) (Environment & Land  
Case 21 of 2018) [2023] KEELC 21964 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21964 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE 21 OF 2018**

**EC CHERONO, J  
NOVEMBER 30, 2023**

**BETWEEN**

**TABITHA NJERI CHERERE (SUING AS THE ADMINISTRATOR OF JOHN  
CHERERE MWANGI - DECEASED) ..... PLAINTIFF**

**AND**

**GICHUHI GITHUMBI (SUED AS THE ADMINISTRATOR OF THE ESTATE OF  
KITHUMBI KICHUHI - DECEASED) ..... 1<sup>ST</sup> DEFENDANT**

**PATRICK CHARAI GICHUHI ..... 2<sup>ND</sup> DEFENDANT**

**JOSEPH GITARI EZEKIEL ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**GEODFFREY K. KANDENGE ..... INTENDED DEFENDANT**

**JUSTIN MUTHII WACHIRA ..... INTENDED DEFENDANT**

**JOSEPH IRUNGU NGANGA ..... INTENDED DEFENDANT**

**FAITH WANJIKU MACHARIA ..... INTENDED DEFENDANT**

**EVANS IRUNGU MUTUNGI ..... INTENDED DEFENDANT**

**PETER THAIKU MUGUGA ..... INTENDED DEFENDANT**

**ROBERT MUNGA KARIUKI ..... INTENDED DEFENDANT**

**JACKSON M. MBUTHIA ..... INTENDED DEFENDANT**

**CHARLES M. GATUURA ..... INTENDED DEFENDANT**



## RULING

1. On 12<sup>th</sup> November 2021, this Court delivered final judgement in favour of the Plaintiff and issued the following Orders;
  - a. The registration of Gichuhi Githumbi and/or Administrators in land parcel no Mwerua/Kagio/646 and all resultant sub-divisions are hereby cancelled.
  - b. The 3<sup>rd</sup> Defendant's land parcel Number Mwerua/ Kagio/2732 being a portion of the resultant division of land parcel number Mwerua/Kagio/2636 be and is hereby cancelled.
  - c. The Land Registrar, Kirinyaga County is hereby directed to rectify the register by entering the plaintiff, Tabitha Njeri Cherere as owner of land parcel number Mwerua/Kagio/2732.
  - d. The cost of the suit shall be borne by the Defendants, jointly and severally.
2. The applicants have now moved this Court *vide* an application dated 15<sup>th</sup> November 2021 seeking a stay of execution of the court's judgement, enjoinder of the applicants to this suit and subsequent setting aside of the court's judgement. The applicants contend that they are the registered owners of land parcels Mwerua/Kagio 8017, 8078, 9275, 9276, 8239, 1053, 7780, 7801 and 3393 being subdivisions of Parcel no Mwerua/Kagio/646.
3. Each of the applicants filed their respective affidavits making averments how they acquired their respective parcels. It is their common contention that this court ordered the cancellation of all subdivisions and further subdivisions in respect to land parcel no Mwerua/kagio/646 thereby affecting 100 registered owners who stand to be evicted.
4. They denied that the Respondent is in possession of any part of Mwerua/kagio/646 and averred that her husband John Cherere Mwangi (deceased) was evicted from the suit land in the year 2009. That the allotment letter tendered by the plaintiff is of a different parcel of land being Mwerua/kagio/630 and not Mwerua/kagio/646, which the applicants are beneficiaries.
5. That cancelling subdivisions of Land Parcel no Mwerua/Kagio/646 is erroneous as it is tantamount to cancelling the confirmed grant issued in Embu High Court Succession Cause no 80 of 1993 which this court has no jurisdiction over.
6. The applicant filed grounds of Opposition dated 30<sup>th</sup> November 2020 raising the following grounds;
  - a. That the application is a sham, vexatious and the same ought to be dismissed with costs.
  - b. That this Honourable Court is now *functus officio*.
  - c. That the Orders sought are not available to the applicant since there is nothing new that has arisen to warrant review/ setting aside of the Court's judgement.
  - d. That the application is fatally defective and the same ought to be dismissed with costs.
7. The Respondent also filed a Replying affidavit dated 11<sup>th</sup> February 2022 where she stated that from the onset, she has been in possession of Mwerua/kagio/2732. That this Honourable Court found that he is entitled to parcel Number Mwerua/kagio/2732 proceeded to cancel the said title and directed the title be registered in her name. That the 3<sup>rd</sup> Defendant did not appeal this Court's decision. That the applicants herein have no interest whatsoever to Land parcel Mwerua/kagio/2732 as none of them has claimed the same in the application.



8. The 4<sup>th</sup> Applicant filed a supplementary affidavit dated 14<sup>th</sup> March 2022 in which he deposed that the Respondent has agreed with the applicant that she was not entitled to an Order for the cancellation of subdivisions in Mwerua/kagio/646.
9. On 14<sup>th</sup> February 2022, the parties by consent agreed to have the said application canvassed by way of written submissions. At the time of writing this Ruling, only the applicant had filed their submissions. In their submissions, the applicants restated their averments made in support of the application. They further submitted that by virtue of Section 24 as read with Section 26 of the Land Registration Act, their titles were indefeasible. That they have not been granted the right to be heard as enshrined in Article 50 of the constitution and that Section 19 of The Environment Land Act 2011 provides that this Honourable Court should be guided by the principles of natural justice.

### **Analysis and Determination**

10. I have considered the application, replying affidavit, the submissions filed and the relevant law. From the materials placed before me, I find that the issues that commend for determination are; a) Whether the applicant ought to be enjoined as parties to the suit (b) Upon grant of prayer (a) whether the intended defendant ought to be granted leave to file their respective defence.
11. The relevant provisions on joinder of parties is Order 1 Rule 10 (2) of the Civil Procedure Rules which states as follows;

The Court may 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.

12. In Habiba W. Ramadhan & 7 others v Mary Njeri Gitla (2017) eKLR; Nairobi High Court ELC Case no 119 of 2014 the Court held as follows;

“As already observed by the Court, under Order I Rule 10(2) the Court has discretion to order joinder of any party to a suit at any stage of the proceedings so long as the presence of that party before the Court is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions in dispute...”

13. In Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR, Mativo. J. explained when an interested party ought to be enjoined in a proceeding. He stated: -

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty.”



14. It is not in dispute that this Honourable Court has already rendered itself on this case and ordered the cancellation of all subdivisions in Mwerua/kagio/646. The applicants contend that the Respondent's only interest is in respect to land Parcel no Mwerua/kagio/2732. They contend that they have a stake in the cancelled subdivisions and further subdivisions arising from land parcel no Mwerua/Kagio/646 i.e. Mwerua/Kagio/ 8077, 8078, 9257, 9276, 8239, 10537, 7800, 7801 and 3393 protected under Section 24, 25 and 26 of the Land Registration Act 2012.
15. The applicants further contend that their titles are resultant subdivision of land parcel no Mwerua/kagio/646, which has been cancelled. The applicants also stated that they were not parties to this suit when the order for cancellation was made. They stated that they clearly have a legal and identifiable interest in the suit herein. In view of the matters aforesaid, I find that the applicants have established the threshold to be joined as parties to this suit.
16. What then should be the next remedy after the joinder? The applicants herein seeks to set aside the judgement of this Court delivered on 12<sup>th</sup> November 2021 and for leave to file their respective defences. The Principles of Order 10 of the Civil Procedure Rules consequence of non-appearance, default of defence and failure to serve do not apply to the circumstances of this case. I dare say that the only available remedy to the applicants is for review and appeal as found under Order 45 and 42 of the Civil Procedure Rules respectively. The applicant has not sought any prayers of such a nature in their application. They are however at liberty to move the court for such orders at the appropriate time.
17. The applicants also seek an order for stay of execution of this Court's judgement. The applicants have just been admitted as parties to this suit and are yet to file any pleadings upon which this Honourable court can make a determination whether the stay of execution orders or not. In my view, the prayer for stay of execution is premature at this stage.
18. The upshot of my analysis is that the application dated 15<sup>th</sup> November, 2021 is merited and the same is allowed only to the extent that the applicants herein are joined as defendants to this suit. Orders accordingly

**READ, DELIVERED, DATED AND SIGNED IN THE OPEN COURT/VIRTUALLY AT BUNGOMA THIS 30<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**HON. B.C. CHERONO**

**ELC JUDGE**

**In the presence of:-**

1. C.S Macharia for plaintiff/Respondent
2. Applicants/advocate-absent
3. Defendant/advocate-absent
4. Okwaro C/A

