



**Suleiman v Lankas (Environment and Land Appeal 35 of 2019)
[2023] KEELC 21918 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21918 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND APPEAL 35 OF 2019
CG MBOGO, J
NOVEMBER 30, 2023**

BETWEEN

HANIB AYUB SULEIMAN APPELLANT

AND

MARY LANKAS RESPONDENT

*(Being an appeal from the ruling of G.Wakahiu Chief Magistrate delivered in Narok
Chief Magistrate Misc. Case No. 8 of 2007 and on an application dated 30th July 2019)*

JUDGMENT

1. The appellant being dissatisfied with the ruling of G. Wakahiu, Chief Magistrate delivered on 17th December, 2019 appealed against the said ruling *vide* a memorandum of appeal dated 18th December, 2019 and filed in court on 19th December, 2019 on the following grounds: -
 1. That the learned magistrate totally misapprehended the law as submitted by the applicant thereby causing serious miscarriage of justice.
 2. That the learned magistrate totally misled himself in donating to himself appellate jurisdiction, even against a ruling by a judge of the high court.
 3. That the learned magistrate refused and/ or failed to appreciate obvious legal provisions and particularly that the challenged application was improperly before court and that the court process had obviously been abused.
 4. That the learned magistrate erred in law in failing to appreciate the applicable law and that the advocates urging the challenged application were not properly on record and could not have obtained orders and if so, the said orders were irregular and to that extent irregular.



5. That the learned magistrate failed and/ or refused to notice and/or appreciate not only the law but settled legal principles and especially on execution of decrees and consequently went into error.
 6. That the learned magistrate went into error and caused a serious miscarriage of justice by making orders that amounted to obvious double execution as against the appellant.
 7. That the learned magistrate erred in law in failing to appreciate the law and particularly on service of court process.
2. The appellant therefore prays that the ruling of the learned magistrate be set aside and/ or vacated and the appellant's application dated 30th July, 2019 be allowed with costs.
 3. The grounds of appeal were canvassed by way of written submissions. On 25th July, 2023, the appellant filed his written submissions dated 19th July, 2023. The appellant submitted that the firm of Mugo Kambo & Co. Advocates who had filed an application seeking to execute the decree was irregularly on record as they sought to represent the respondent after judgment had been entered and adopted. According to him, this was a mandatory requirement, the purpose whereof to ensure that none of the parties is taken by surprise or none of the litigants take undue advantage of the other. The appellant relied on the cases of *James Ndonyu Njogu v Muriuki Macharia* [2020] eKLR and *John Langat v Kipkemoi Terer & 2 Others* [2013] eKLR.
 4. The appellant further submitted that the advocate who sought to execute the decree was irregularly on record and the execution was therefore irregular and to that extent, unlawful. Further, that no warrants were issued by the court and neither an auctioneer or a court bailiff was involved in the execution. The appellant relied on the cases of *Naivas Limited v Newton Nyoro Mukuha* [2016] eKLR and *Moses Kipkurui Bor v John Chirchir* [2019] eKLR.
 5. The appellant further submitted that the proceedings challenged in the appeal, all amounted to gross abuse of the court process as the respondent herein preferred an appeal against her own decree.
 6. On 26th September, 2023, the respondent filed her written submissions dated 25th September, 2023 where she raised three issues for determination as follows: -
 1. Who should elect on how a decree should be executed.
 2. Whether the due process was followed in execution of the decree.
 3. Whether procedural technicalities override justice and fairness between parties.
 7. On the first issue, the respondent submitted that the provisions of the law under Order 22 Rule 6 of the *Civil Procedure Rules* are critical in that the law envisages and/or impute that it is the right and obligation of the decree holder to apply execution of his/her decree and that the purported satisfaction of the decree by the appellant was therefore ill-advised and only calculated to obtain property that he illegally took just because he has the money to pay for the same.
 8. On the second issue, the respondent submitted that the appellant is embarking on selective reading of the provisions of Order 22 Rule 18 (1)(a) and (c) of the *Civil Procedure Rules* in total isolation of the provision contained in Order 22 Rule 18 (c). The respondent submitted that the ruling delivered by the trial court, the subject of this appeal was proper based on the judgment delivered by Kullow, J in ELC Cause no. 484 of 2017 on 12th October, 2018. That subsequently, on 2nd May 2019, the respondent approached the lower court for execution of her decree as directed by the court. The respondent relied on the case of *Mary Apondi Ongoro v Kenblest Limited & 3 Others* [2017] eKLR.



9. On the third issue, the respondent submitted that this is not the first time that this issue has been determined and that the issue relating to representation of the parties has been exhaustively addressed by this court vide appeal no ELC Cause no 484 of 2017. The respondent further submitted that the title so far acquired is an indefeasible title that was acquired procedurally by an order of the court and that the rights which the appellant seeks to bestow upon himself should not only be defeated but should not even see a glimpse of light.
10. I have considered the grounds of appeal and the rival submissions filed by both parties and, in my view, the issue for determination is whether the grounds of the appeal are merited to interfere with the ruling delivered by the trial court on 17th December, 2019.
11. The trial court delivered a ruling on 17th December, 2019 dismissing the application dated 30th July, 2019 that is the subject of the instant appeal. The appellant herein filed an application dated 30th July, 2019 seeking the following orders: -
 1. Spent.
 2. Spent.
 3. Spent.
 4. That this honourable court be pleased to call and review the orders made on 25th April, 2019 and particularly that the District Land Registrar recalls and cancels the title issued to the plaintiff/respondent for four acres of land delineated from Cis-Mara/ Oleleshwa/544 and Cis-Mara/ Oleleshwa/ 545.
 5. That the orders made on 25th April, 2019 and all consequences therefrom be, vacated and set aside as the said orders were made in vacuo and due to non-disclosure of material facts and amounting to abuse of this honourable court process.
 6. That the plaintiff/respondent be ordered to pay the costs of this application.
12. The application was supported by the affidavit of the appellant sworn on even date. The application was opposed by the replying affidavit of the respondent sworn on 28th August, 2019 as well as grounds of opposition dated 28th August, 2019. In her response, the respondent contended that the appellant was duly served with the notice dated 18th March, 2019, but chose to be indolent on the notice and that she has a right to choose the manner in which she should execute her own decree.
13. In arriving at its decision, the trial court found that failure by the firms of Tanyasis Lemein & Co. Advocates as well as Mugo Kambo & Co. Advocates to obtain leave of the court or consent from Karanja Mbugua & Co. Advocates was not fatal to the respondent's case. Reference was also made to the judgment delivered in ELC Cause no 484 of 2017 which my attention has been drawn to.
14. In the said judgment by Kullow, J delivered on 12th October, 2018, the issue of representation came up save that the contention lied with the firm of Mulwa and Mulwa & Company Advocates. The court found no prejudice that the appellant has suffered, as a result of the representation and that no appeal from the finding of the trial court was preferred against the said ruling. The court also found that the decree was proper and free from any ambiguity and that the burden was on the appellant to choose how to execute the same and to insinuate that the court decided for the decree holder on how to execute the same is far-fetched and as a result this ground of appeal failed.
15. In my view, the issues raised in the instant application are issues that have already been dealt with in the judgment delivered by Kullow, J on 12th October, 2018 and any attempt to comment or otherwise



would be tantamount to this court sitting on its own appeal. Further, I find that no valid grounds have been raised to interfere with the ruling delivered on 17th December, 2019.

16. Arising from the above, the memorandum of appeal dated 18th December, 2019 is hereby dismissed with costs to the respondent. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 30TH DAY OF NOVEMBER, 2023.

HON. MBOGO C.G.

JUDGE

30/11/2023.

In the presence of:-

CA:Meyoki

