



Kivuana & 2 others v Njagi & 21 others; Joseph (Interested Party) (Environment and Land Appeal 6A of 2017) [2023] KEELC 22515 (KLR) (29 November 2023) (Ruling)

Neutral citation: [2023] KEELC 22515 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL 6A OF 2017
A KANIARU, J
NOVEMBER 29, 2023**

BETWEEN

NJUE MUNYI KIVUANA & 2 OTHERS APPELLANT

AND

GILBERT NJERU NJAGI 1ST RESPONDENT

PATRICK NTHIA & 20 OTHERS 2ND RESPONDENT

AND

GABRIEL NJUE JOSEPH INTERESTED PARTY

RULING

1. The application before me for determination is a Notice of Motion application dated 14/04/2021 and filed on the same date. It is expressed to be brought under Section 3A of the *Civil Procedure Act*, the *Constitution of Kenya* 2010, and all enabling provisions of law. The applicant is Gilbert Njeru Njagi whereas the Respondent is the Interested party – Gabriel Njue Joseph. Gilbert is seeking the following orders;
 - a. That the Applicant’s name in the decree (gilbert Njeru Njagi) dated 20th February 2021 be rectified to include an alias Njeru Njagi and the same be treated as one person.
 - b. That cost of this application is provided for.
2. The application is premised on the grounds set out on its face and on a supporting affidavit sworn on 14.04.2021 by the said Gilbert Njeru. Gilbert stated, *inter alia*; that his name as per his Identity card is Njeru Njagi while proceedings in this matter bear his name Gilbert Njeru Njagi; that both names are his; that he obtained a decree issued on 20.02.2022 wherein he was tasked to distribute the suit land to other people of his clan as their Chairman; that he has already booked the Land Board for over 10 transfers but the same might not go through because his name in the decree and his national identity



- card are not the same; that he swore an affidavit but the Land Registrar advised that he goes with a court order; that no one will suffer any prejudice if this application is allowed.
3. The application was responded to vide a replying affidavit dated 11/10/2022 and filed on 12/10/2022. It was sworn by one Gabriel Njue Joseph who introduced himself as an Interested Party, him being one of the 22 beneficiaries of the suit land. He was objecting to the Applicants application on the grounds that the Applicant's application is misconceived as Section 99 of the Civil Procedure Act only provides for correction of clerical and arithmetical mistakes or errors arising from any accidental slip or omissions in court judgements, orders and decrees and therefore the orders sought by the Applicant are contrary to the said law; that there is nowhere that the Applicants name and signature is required in the lands offices for purposes of implementing the decree as his role is supervisory; and that every document relating to the suit land should be signed and executed by the Registrar.
 4. He filed a further affidavit on 05.10.2023 where he accused the Applicant of having registered the suit land in his favour and causing it to be subdivided into 22 portions in his names; he further accused the Applicant of intending to distribute the said land to his friends illegally. He also contends that on the ground, each of the 22 beneficiaries know their portions and what is required is for the District Surveyor to be ordered to visit the ground of the suit land and ascertain the acreage each beneficiary occupies and is entitled to. He asked the court to cancel the registration of the suit land to the Applicant and the cancellation of the resultant subdivisions in the Applicants name and the same be restored to their original names. He attached a copy of search of the suit land being Evurore/Nguthi/1964 and a copy of the mutation form.
 5. The Application was canvassed through written submissions. The Applicant filed his submissions on 30.08.2023 whereas the Respondent filed his submissions on 09.10.2023.
 6. I have considered the application, the replying affidavits and the rival submissions. I find that the issue for determination is whether the Application has merit.
 7. The history of this case is that there has been a long standing dispute over Land parcel No. Evurore/Nguthi/1964 which is said to have been held in trust by the Appellants as registered proprietors on behalf of the Applicant, the Interested Party and others who are beneficiaries. The Applicant and the other beneficiaries sued the four Trustees for failing to distribute the suit land to them and the case went through numerous litigation before it was finally decided that the said trustees held the suit land in trust for the beneficiaries and not as absolute proprietors. The trustees were to subdivide their various portions of the suit land to the beneficiaries so that each of them gets registered as owners of their individual plots. The Applicant was then mandated to supervise the distribution of the suit land amongst all the beneficiaries entitled thereto; and the Deputy Registrar was directed to sign and execute all the necessary documents on behalf of the Trustees for the purpose of fully implementing the judgement of the court.
 8. The Applicant says that he has booked the Land Control Board for the transfer of the suit property and that he is apprehensive that the transaction might not go through since the name he used in these proceedings is different from the name in his Identification Card. It is on this ground that he is seeking to have the name used in the Court Order mandating him to supervise the transaction amended to align with that which is in his Identification Card. The Interested Party is objecting to this for the reasons set out above.
 9. The Applicant has brought this application under Section 3A which gives this court inherent powers to make orders as may be necessary to meet ends of justice or to prevent abuse of the process of court. I do not agree with the Interested Party that this court is limited by Section 99 of the Civil Procedure Act to confine itself to the rules set out thereunder where, as here, the orders sought are to meet the



ends of justice. The Applicant was appointed by the Court to supervise the distribution of the suit land to the beneficiaries. In my view, the orders he is seeking are within his mandate as the orders are being sought in an effort to comply with the court orders. I have looked at the Search produced by the Interested Party claiming that the Applicant has transferred the suit land to himself as the proprietor. The said search indicates that the Title of the suit land was closed on mutation and subdivision and new numbers issued which are indicated as No. 4563 - 4584. The mutation form also indicates that the relevant letter of consent to subdivide the suit land was provided and the Applicant is quoted to be the party pursuing the transaction.

10. In my view, the Applicant has performed the said transactions in an effort to comply with the court orders. I am not persuaded that the Applicant has the intention of defrauding the beneficiaries. The reason for this is that, being that there are 22 beneficiaries to the suit land, it seems odd to me that only one beneficiary has taken issue with the Applicant's application. If at all there was any mischief, I believe that even the other beneficiaries would be raising a red flag but this has not happened. I do not see any reason why the Applicant should not be granted the orders he is seeking. Besides, any party genuinely aggrieved by the process can always have recourse to a court of law.
11. The upshot of the above is that I find the notice of motion application dated 14.04.2021 merited and therefore allow it in terms of prayer (1). I make no order as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 29TH DAY OF NOVEMBER, 2023.

In the presence of; Mugane for M/s Fatuma Wanjiku for interested party;

1st respondent/applicant and 2nd respondent present in person and in the absence of the Interested party.

Interpretation: English/Kiswahili

A.K. KANIARU

JUDGE

29.11.2023

