



**Onsongo v Onsongo & 2 others (Environment & Land Case
E006 of 2023) [2023] KEELC 21900 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21900 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E006 OF 2023**

**JM KAMAU, J
NOVEMBER 21, 2023**

BETWEEN

ROBERT NYAMWEYA ONSONGO PLAINTIFF

AND

HUNDSON MASARA ONSONGO 1ST DEFENDANT

DISTRICT LAND REGISTRARS (NYAMIRA) 2ND DEFENDANT

HON. ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. Before me is an Application dated 10/7/2023 by the Plaintiff/Applicant. On 15/6/2023 this Court ordered that:

“Pending the hearing and determination of this suit this Honorable Court hereby restrains the 1st Defendant/Respondent by himself, agents, servants, employees, and/or others howsoever from cutting trees, doing construction, selling and/or transferring all that parcel of land known as land No. Central Kitutu/Mwogeto/ 210 in whole or otherwise but allows the daily activity of plucking the tea leaves from the tea bushes by both parties. Costs will abide the outcome of the suit.”

2. The Court has been asked to stay the order requiring parties to file and exchange documents supporting their case as well as witness statements within 7 days in readiness for the hearing of the case set for 13/7/2023 and also leave to amend the Plaint within 7 days.
3. The 1st Defendant opposed the Application vide his Replying Affidavit sworn on 25/7/2023 and filed on 26/7/2023 claiming that the Application is bad in law and that changes should not be allowed on a piece of land registered in his (1st Defendant’s) name and that what the Plaintiff seeks in his Application is the assistance of the Court in fishing for evidence.



4. I have considered the written submissions of both parties before retiring to write this Ruling concerning the Review of the Orders on 15/6/2023. There is no indication that any new facts not before the Court at the time of issuing the Order have been discovered. Nor has it been demonstrated to this Court that there is an error apparent on the face of the record. The law is very clear on the grounds that would necessitate a Review of Court Orders. On the issue of the forest officer, extension officer and land valuer visiting the suit land to determine the value of trees, cost and value of the tea bushes cut therefrom and cost of the house destroyed and the damage respectively, it is important to look at the prayers sought in the Plaintiff.
1. That order the 2nd Defendant and 3rd Defendant herein to cancel the land certificate of land No. Central Kitutu/Mwogeto/ 210 measuring approximate area of 0.30Ha registered under the names of Hundson Masara Onsongo, the 1st Defendant/Respondent herein and have the same revert back under the names of the previous registered owner Onsongo Masara – DCD for purposes of proceedings for a succession cause over the Estate of Onsongo Masara - DCD.
 2. Costs of the suit.
5. There are no prayers for General and/or Special Damages in the suit though the same are alluded to under paragraph 6 of the Plaintiff. And although I granted leave to the Plaintiff on 15/6/2023 to amend his Plaintiff within 7 days, this was not done. In the absence of a prayer for Special and General Damages in the Plaintiff, how will assessment of destroyed tea bushes, felled trees and/ or destruction of houses on the suit land which we are not even told were put up by the Plaintiff help the Applicant. The Reports by the experts will just be beautiful and good figures that will be appetizing to the Plaintiff but which cannot add any value to his suit should this Court arrive at a Judgment that supports the Plaintiff's claim. At best, if successful, all that the Plaintiff can be awarded is the rectification of the Register so that the parcel of land known as L.R No. Central Kitutu/Mwogeto/210 measuring 0.30 Hectares registered in the name of the 1st Defendant is cancelled and the same is rectified to read his name. He would also probably get the costs of the suit. Nothing more. The reason being that Parties are bound by their pleadings. The Application dated 10/7/2023 is a waste of precious judicial time. The same is therefore dismissed with costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 21ST DAY OF NOVEMBER 2023

MUGO KAMAU

JUDGE

