



**Muhindi v Misoi (Environment & Land Case 12 of 2014)
[2023] KEELC 21548 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21548 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 12 OF 2014
EO OBAGA, J
NOVEMBER 16, 2023**

BETWEEN

RAPHAEL KAGALI MUHINDI PLAINTIFF

AND

MARY JEROTICH MISOI DEFENDANT

RULING

1. This is a ruling in respect of Notice of motion dated 3/2/2023 in which the Decree holder/Applicant seeks the following orders:-
 1. That the Honourable court be pleased to order the County Surveyor –Nandi County to survey and demarcate 0.83 Hectares comprised in the land parcel known as Nandi/Chebilat/129 in line with the judgement and decree of the Honourable court dated 24th June, 2021.
 2. That the court be pleased to direct the officer commanding station (OCS) –Kobujoi Police station to provide security during the exercise.
 3. That the Deputy Registrar of this Honorable court be pleased to execute transfer instruments in respect of 0.83 Hectares comprised in the land known as Nandi/Chebilat/129 in favour of the plaintiff as decreed in the judgment dated 24th June, 2021.
 4. That costs of this application be provided for.
2. The Applicant contends that a judgement in his favour was delivered on 24.6.2021 in which the court found that he had acquired 0.83 hectares out of Nandi/Chebilat/129. The Judgement Debtor/ Respondent has since declined to sign transfer documents in order that the Applicant can have his 0.83 hectares.



3. On 19.5.2020 one Sailas Livali filed an application dated 18.5.2022 in which he sought to be joined in this case and for stay of execution of the judgement and that the proceedings be set aside so that he can be allowed to file a defence. This application was dismissed vide a ruling delivered on 19.1.2023.
4. The Applicant contends that as there is no appeal against the judgement of 24.6.2021 and there is no stay, he should be allowed to execute the decree arising from the judgment to enable him enjoy the fruits of his judgement.
5. Before the Applicant could respond to the Applicant's notice of motion dated 3.2.2023, the Respondent filed a notice of appeal on 8.3.2023. Another application was filed by two proposed interested parties who sought to be joined in these proceedings. They also sought stay of execution. The two proposed interested parties had previously filed notices of appeal against the judgement. They subsequently filed an application dated 21.3.2023 in which they sought to have the Notices of Appeal validated. This application was dismissed vide ruling dated 26.6.2023.
6. The Applicants had also filed an application for stay of execution before the Court of Appeal seeking validation of the Notices of Appeal.
7. On 23.10.2023 the Respondent filed grounds of opposition in which she contends that the Applicant's application offends section 6 of the *Civil Procedure Rules* in that there is Eldoret Court of Appeal Civil Appeal No. E014 of 2023, Eldoret Court of Appeal Civil Appeal (Application) No. E014 of 203 seeking stay of execution and Eldoret Court of Appeal Civil Application No. 24 of 2023 seeking validation of the Appeal.
8. The Respondent therefore argued that this court should not entertain parallel proceedings in respect of a matter pending before the Court of Appeal. The Respondent further argued that the present application ought to be put in abeyance to avoid a situation where there are conflicting decisions.
9. When the application dated 3.2.2023 came up for hearing on 25.10.2023, the court was informed that the application before the Court of Appeal seeking validation of the Notices of Appeal had been heard and a ruling was due on 27.10.2023. This court put on hold the hearing of application dated 3.2.2023 pending the outcome of the Court of Appeal ruling on 27.10.2023. The court however fixed the application dated 3.2.2023 for hearing on 31.10.2023 subject to the outcome of the ruling 27.10.2024 by the Court of Appeal.
10. On 31.10.2023, this court was informed that the Court of Appeal had dismissed the application seeking to validate Notices of Appeal filed before it. I then directed that hearing proceeds orally. Mr. Mogambi sought to have the supporting affidavit to the application dated 3.2.2023 adopted as his argument.
11. Mr. Nabasenge urged the court to put in abeyance the hearing of the application dated 3.2.2023 arguing that he was going to file a reference before a three judge bench of the Court of Appeal. He stated that the ruling dismissing the Applicant's application for validation of the Notices of Appeal was heard by one judge and that he wanted the same to be heard by a bench of three by way of reference. He also argued that there was still another appeal being Eldoret Court of Appeal No. E014 of 2023 which was still pending.
12. I have carefully considered the Applicants' application as well as the opposition to the same by the Respondent. The only issue for determination is whether the application dated 3.2.2023 should be allowed. The Applicant has a judgment in his favour. There is no stay of execution either from this court or the Court of Appeal. The Notices which were filed before the Court of Appeal were incompetent. The Court of Appeal has since dismissed the application to have them validated.



13. The Applicant is seeking to execute the decree arising from the judgment of 24.6.2021. Attempts to have the incompetent Notices of Appeal validated have failed. The pending Appeal no. E014 of 2023 will certainly suffer the same fate. The mere fact that the Applicant intends to file a reference is not a bar to this court proceeding to allow the present application. I therefore find that the Applicants' application dated 3.2.2023 is well merited. The same is allowed in its entirety.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16TH DAY OF NOVEMBER, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Wambua Kigamwa for Plaintiff/Decree Holder.

Court Assistant –Laban

E. O. OBAGA

JUDGE

16TH NOVEMBER, 2023

