



REPUBLIC OF KENYA



**Kamau & 2 others v Karanja & 3 others (Environment & Land Case  
21 of 2019) [2023] KEELC 22175 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22175 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE 21 OF 2019  
LN GACHERU, J  
DECEMBER 14, 2023**

**BETWEEN**

**MARGARET WAMBUI KAMAU ..... 1<sup>ST</sup> PLAINTIFF  
KARIUKI KARANJA ..... 2<sup>ND</sup> PLAINTIFF  
ELIAS KARANJA MWANGI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**EUTYCHUS MWANGI KARANJA ..... 1<sup>ST</sup> DEFENDANT  
DAVID MUIGAI MWANGI ..... 2<sup>ND</sup> DEFENDANT  
JAMES KAMAU KARUTHUI ..... 3<sup>RD</sup> DEFENDANT  
MICHUGU MWANGI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiffs/Applicants have brought this Notice of Motion Application dated 19<sup>th</sup> January 2023, wherein they sought for the following Orders;
  1. That, this Honourable Court be pleased to issue an order directing the Land Registrar – Murang’a to remove all the names appearing as joint registered owners of Land Parcel Number Loc.2/Makomboki/154, and revert to the name of the late Karanja Chege.
  2. That, this Honourable Court be pleased to compel the 1<sup>st</sup> Defendant herein to surrender the illegally acquired title deeds for land parcel Numbers Loc.2/Makomboki/1297, 1298, 1299, 1300 and 1301, to the Land Registrar Murang’a Lands Office.
  3. That, this Honourable Court be pleased to order fresh subdivision of land parcel number Loc.2/Makomboki/154, to the beneficiaries of the late Karanja Chege only and the said beneficiaries to be present during the subdivision exercise.



4. That, the OCS Kigumo Police Station to provide security during the subdivision exercise and to supervise compliance of this Court Order.
5. That, costs of this application be met by the 1<sup>st</sup> Defendant.
2. This application is premised on the following grounds;
  1. That, judgement in this case was delivered on 24<sup>th</sup> February 2022, and a decree was issued for cancellation of all title deeds acquired through illegal subdivision of Land Parcel Number Loc.2/Makomboki/154, and the same was served upon the Land Registrar – Murang’a Lands Office on 29<sup>th</sup> March 2022.
  2. That, the Land Registrar has not fully complied with the said decree as the 1<sup>st</sup> Defendant/ Respondent has declined to surrender the illegal title deeds for cancellation and fresh subdivision for Land Parcel Number Loc.2/Makomboki/154, cannot take place due to interference, threats, hostility and violence by the 1<sup>st</sup> Defendant herein.
  3. That, it will only be fair and just and to the interest of justice for this Honourable Court to grant the orders hereinabove sought to have this matter come to a rest.
3. It is also supported by the Affidavit of Margaret Wambui Kamau, who averred that she is one of the Plaintiffs herein with authorities to plead for the other Plaintiffs/Applicants. It was her averments that she is one of the beneficiaries of the land parcel No. Loc.2/Makomboki/154, which was initially registered in the name of the late Karanja Chege, as is evident from annexure MWK 1, which is a copy of the Green Card issued on 10<sup>th</sup> October 2022. She also averred that the Judgement herein was delivered on 24<sup>th</sup> February 2022, wherein the Court ordered and decreed the cancellation of title deeds of land parcels numbers Loc.2/Makomboki/1297, 1298, 1299, 1300 and 1301, which parcels of land emanated from illegal subdivision of land parcel No. Loc. 2/Makomboki/154. She further alleged that the said Judgement and Decree was served upon Murang’a Lands Registry on 29<sup>th</sup> March 2022, to facilitate cancellation of all those title deeds acquired illegally and she annexed MWK 2, which is a copy of application for registration.
4. It was her contention that the Land Registrar Murang’a has not complied with the Decree dated 24<sup>th</sup> February 2022, on the grounds that the title deeds for land parcel No. Loc.2/Makomboki/1297, 1298, 1299, 1300 and 1301 are in possession of the 1<sup>st</sup> Defendant, who has not surrendered the title deeds to Murang’a lands office, which was marked MWK 3 which is an official search, dated 1<sup>st</sup> November 2022.
5. She also contended that her effort to have fresh subdivision of land parcel No. Loc.2/Makomboki/154, to the lawful beneficiaries of the late Karanja Chege was thwarted by hostile interference, violence and threats from the 1<sup>st</sup> Defendant/Respondent herein.
6. Further that they even sought the intervention of the area Chief and the Police Officers from Kigumo Police Station to use their Constitutional powers to enable fresh subdivisions and surrender of the illegal title deeds, but the 1<sup>st</sup> Defendant/Respondent has adamantly declined to do so. She therefore, urged the Court to issue orders compelling the 1<sup>st</sup> Defendant/Respondent to surrender title deeds that he obtained from the illegal subdivision of land parcel No. Loc.2/Makomboki/154, and directs that the OCS Kigumo Police Station do provide security during fresh subdivision in the presence of all the lawful beneficiaries of the late Karanja Chege and supervise the said Court order.
7. She also urged the Court to issue an order for surrender of the illegal title deeds, fresh subdivision of the aforesaid parcels of land and directs the OCS Kigumo Police Station to provide Security and



ensure that subdivision process go smoothly. Further that it would be fair and just and for the interest of justice to allow the orders sought.

8. The application is opposed by Eutyclus Mwangi Karanja, the 1<sup>st</sup> Defendant/Respondent who averred that the said application is misconceived, incompetent, superfluous, frivolous, vexatious and untenable.
9. It was his contention that in the Judgement of 24<sup>th</sup> February 2022, the Court cancelled land parcel No. Loc. 2/Makomboki/1297-1301, from the subdivision of Loc.2/Makomboki/154. However, the Court did not order the cancellation of title No. Loc. 2/Makomboki/154, or the registration of the owners. It was his further contention that the Plaintiffs/Applicants prayers constitutes a new cause of action, and that as per annexure MWK 3, it is clear that all the titles number Loc. 2/Makomboki/1297-1301, were cancelled. Therefore, the prayers to surrender cancelled titles are superfluous and the Court should not issue orders in vain. Further, that the owners of Loc. 2/ Makomboki/154, are the ones to apply for partition and it is not for the Court to direct on how to do it as the court is now functus officio.
10. That it is evident from MWK3 that the Land Registrar complied with the Decree of this Court and therefore the application is not merited and should be dismissed with costs. Further that this application is a deliberate attempt to mislead the Court as the alleged title deeds are cancelled.
11. The Application was canvassed by way of written submissions. The Plaintiffs/Applicants filed their written submissions on 18<sup>th</sup> May 2023, and submitted that the purpose of this application is to ensure the execution and effecting of the orders issued by the Court in its judgement of 24<sup>th</sup> February 2022, and it is important so that the Plaintiffs/Applicants can enjoy the fruits of their Judgement. Therefore, the application is not an abuse of the Court process and is not frivolous.
12. The 1<sup>st</sup> Defendant/Respondent filed his written submissions on 5<sup>th</sup> October 2023, and submitted that the application is misconceived and incompetent as the Court is now *functus officio* as the titles for Loc.2/Makomboki/1297-1301, were cancelled pursuant to the Decree of this Court and reverted to Loc.2/Makomboki/154. The Court was urged to dismiss the instant application with cost.
13. The Court has considered the pleadings herein in general, the Court's record and the rival written submissions and finds that this is a post-judgement application brought under order 22 rule 6 and rule 28 of the [Civil Procedure Rules](#) and section 3A of the [Civil Procedure Act](#), which Section of Law denotes inherent power to this Court to issue orders that are necessary for the end of justice to be met and to prevent abuse of the Court process.
14. Order 22 rule 6 of the [Civil Procedure Rules](#), provides that where a holder of the Decree desire to execute the said Decree, he shall apply to the Court that passed the Decree and order 22 rule 28 of the said rules is on disobedience of Decree for specific performance of a contract or for injunction. The Decree herein is not for specific performance of a contract or an injunction, and therefore this provision of land is not relevant.
15. From the judgement of the court issued on 24<sup>th</sup> February 2022, the Court directed that;

A declaration be and is hereby made that the subdivision of land parcel No. Loc 2/ Makomboki/154 was illegal and further issued subsequent cancellation of the new titles No. Loc. 2/Makomboki/1297-1301.
16. A decree was issued to that effect on 8<sup>th</sup> March 2022.



17. The Court issued the above declaration only on the fact that during the actual subdivisions of the land, the surveyor who had been contracted by the 1<sup>st</sup> Defendant/Respondent did not take into account the developments on the ground and thus subdivided the land to the effect that the land or areas that were occupied, developed and used by the Plaintiffs/Applicants had been given to the 1<sup>st</sup> Defendant/Respondent without the consent of the Plaintiffs. The Court did not cancel the actual acreage that each party was entitled to.
18. The Plaintiffs/Applicants have urged the Court to issue an order directing the Land Registrar Murang'a to remove the names appearing as joint registered owners of land parcel No. Loc.2/Makomboki/154, and revert the land to Karanja Chege. That prayer had not been sought in the main suit. From the Green card, the Court notes that the said entries were done vide a Succession Cause No. 10 of 1975 in Nairobi. By asking the Court to remove the said entries, then it means the Applicants are asking the Court to reverse the Judgement of another Court in a Succession Cause. This Court has no jurisdiction to do so. This is not an appeal Court and that issue was not even litigated in the main suit. This prayer is therefore untenable. The illegal subdivisions were cancelled so that the parties can now carry fresh subdivisions in the presence of all the parties herein and/or their representatives.
19. In prayer No. 2, the Applicant has sought for orders that the Court do compel the 1<sup>st</sup> Defendant/Respondent to surrender the illegally acquired title deeds for land parcel No. Loc.2/Makomboki/1297-1301. The Court has also seen the Green Card attached to the application and entry No. 12 of 29<sup>th</sup> March 2022, shows that there was cancellation of entry No. 11 vide a Court order in ELC No. 21 of 2019. Entry No. 11 was to the effect that title was closed on partition of new numbers 1297-1301. The cancellation of entry No. 11 meant that the title reverted back to Loc.2/Makomboki/154. The above prayer is also not tenable.
20. On the prayer that the Court do not order fresh subdivision of land parcel No. Loc.2/Makomboki/154, to the beneficiaries of the late Karanja Chege, the Court finds that the said issue was addressed by the Court when it held;

“Consequently, it is only fair that the subdivisions be cancelled and the boundaries fixed afresh bearing in mind the development by the parties”
21. It is upon the parties herein to carry out the said subdivisions as directed earlier by the Court on its Judgement and on the Succession Cause No. 10 of 1975.
22. As rightly submitted by the 1<sup>st</sup> Defendant/Respondent, this Court is functus officio and it should not be called upon to open the matter afresh. By asking the Court to direct that only the beneficiaries of Karanja Chege, be involved in the fresh subdivisions, that is a new cause of action which the Court should not entertain.
23. On provision of security by OCS Kigumo Police Station, the Court finds that the same cannot be issued as the Court in its Judgement only issued orders of cancellation of title deeds for Loc.2/Makomboki/1297-1301, after declaring the said subdivisions were illegal. This prayer should be made in the Court file that had directed subdivisions, which actual subdivisions were found illegal by the Court.
24. Having carefully considered the instant Notice of Motion Application dated January 19, 2023, the Court finds it not merited and the said application is hereby dismissed entirely with costs being in the cause.
25. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 14<sup>TH</sup> DAY OF DECEMBER, 2023.**

**L. GACHERU**

**JUDGE**

**Delivered online in the presence of; -**

1<sup>st</sup> Plaintiffs/Applicants

2<sup>nd</sup> Plaintiffs/Applicants

3<sup>rd</sup> Plaintiffs/Applicants.....Njeri Kiarie

1<sup>st</sup> Mr Wahome Gikonyo for the 1<sup>st</sup> Defendant/Respondent

2<sup>nd</sup> Defendants/Respondents

3<sup>rd</sup> Defendants/Respondents Absent

4<sup>th</sup> Defendants/Respondents

Joel Njonjo - Court Assistant

**L. GACHERU**

**JUDGE**

**14/12/2023**

