



REPUBLIC OF KENYA



KENYA LAW
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**Nyaoni Alias Tuti v Mecha (Environment & Land Case 103 of 2021)
[2023] KEELC 22144 (KLR) (6 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22144 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 103 OF 2021**

JM KAMAU, J

DECEMBER 6, 2023

BETWEEN

ELIAS NYASIMI NYAONI ALIAS TUTI PLAINTIFF

AND

JANE MECHA DEFENDANT

RULING

1. The Plaintiff's suit vide Plaint dated 5/8/2016 sought the following orders: -
 - a. A Declaration that he is the owner and proprietor of the parcel of Land known as LR No. North Mugirango/ Bokeira 1/2966.
 - b. A Declaration that he acting of the Defendant involving evicting and destroying the Plaintiff's properties including a permanent house and other structures from the land parcel was wrongful and illegal since the eviction order was specifically for land parcel No. North Mugirango/ Bokeira 1/2408.
 - c. Damages
 - d. Costs of the suit.
2. On the other hand, the Defendant denied the Plaintiff's claim that land parcel No. North Mugirango/ Bokeira 1/2966 shows a common boundary with land parcel number North Mugirango/ Bokeira 1/2408. She also stated that the Plaintiff was in occupation and /or possession of North Mugirango/ Bokeira 1/2408 and that she has interfered with North Mugirango/ Bokeira/2966 which she claims that no eviction has ever been carried out.
3. The Decree is dated 20/6/2019 and her prayer in the said Decree is that the suit be dismissed with costs. There was an unsuccessful Application for the consolidation of this suit with Nyamira Chief Magistrate ELC No. 15 of 2019 see the Ruling made on 26/10/2022.



4. Subsequently, on 14/11/2022 this court ordered that the Land Registrar and County Surveyor, Nyamira do visit LR No. North Mugirango/ Bokeira 1/2408 for purposed of determining the following.
 - a. The parcel of origin of both parcels.
 - b. From which of the parcels of land the Plaintiff was evicted while carrying out the eviction orders dated 13/6/2011 in Kisii CMM No. 408 of 2008.
 - c. Whether per not there are clearly marked bacons between the 2 parcels of land.
5. On 27/6/2023 both Officers made a Report that was filed in Courton12/7/2023 that gave the following observations; -
 1. North Mugirango/ Bokeira 1 /2408 was created on14/6/2001 as a sub division of North Mugirango/ Bokeira/31 the letter having been created during the Land Adjudication.
 2. Title No. North Mugirango/ Bokeira 1/2966 was created on 26/7/2012 as a result of sub division of North Mugirango/ Bokeira 1/2904 that was created from the subdivision of parcels number 32 originally created during Land Adjudication.
 3. Parcel number 32 did not originally crossover to the Eastern side of Ekerenyo- Nyamusi road. It is only parcel number 31 that extended to both sides of the said road, therefore giving credence to the Defendants' mutation. The Plaintiff was therefore evicted from Lr. NO. North Mugirango/ Bokeira1/2408.
 4. There are no valid boundaries or any at all between LR No. North Mugirango/ Bokeira 1/2308 and 2966. The mutation held by the Plaintiff attempts irregularly to overlay parcel number 2965, 2966 and 2967 on an existing parcel number 2408 and on part of 2407.
 5. The court should proceed to declare parcel no. 2966 and all its sister numbers as null and void and order that cancellation of the Title Deeds and Registers thereof and all other records purporting to create the said parcels.
6. Subsequently, I directed both parties to file their comments on the aforesaid Report which I have gone through before writing this Decision.
7. I order that since this is not purely a boundary dispute, the matter will go to full Hearing and both parties shall be free to refer for the Report of the Land Registrar and County /surveyor, Nyamira dated 27.6.2023. Both Officers shall appear in court to produce the said Report and be cross examined on the contents therein.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 6TH DAY OF DECEMBER, 2023

MUGO KAMAU

JUDGE

