



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC. CIVIL APPLICATION NO. E031 OF 2021

JEREMIAH M'NJOGU APPLICANT

VERSUS

MERU COURT LAND REGISTRAR1ST RESPONDENT

MERU COUNTY LAND SURVEYOR.....2ND RESPONDENT

MERU COUNTY LANDS CONTROL BOARD.....3RD RESPONDENT

THE NATIONAL LAND COMMISSIONER.....4TH RESPONDENT

THE HON. ATTORNEY GENERAL5TH RESPONDENT

YOUNG & CO. (E.A.) LTD.1ST INTERESTED PARTY

MARTHA NAITORE M'MURITHI2ND INTERESTED PARTY

RULING

1. Through a notice of motion dated 30.8.2021 the applicant seeks under **Section 34 (1)** of the **Civil Procedure Act** for the enforcement of the court order dated 17.5.1999 by ordering the 1st respondent to cancel subdivisions over **Parcel No. Ntima/Ntakira/685** and the nullification of subsequent title deed in favour of Janet Tirindi Kathunguri, an order against the 2nd respondent to cancel the subdivisions, mutation forms and re-draw the same in line with the court order; a restriction order against the 2nd interested party from interfering with the implementation of the court order; an order for the 4th respondent to grant subdivision consent to enable the court orders to be implemented and lastly an order that the 1st interested party do adhere to the Court of Appeal order.

2. The application is supported by an affidavit sworn by Jeremiah M' Njogu M'Torugoju on 30.8.2021.

3. The grounds upon which the application is made are, the order sought to be enforced was made by the court on 17.5.1991 in **Civil Application NAI 43 of 1991 (NYR. 15/1990) (Twarugoji Kirimunya –vs- Janet Tirindi Kathunguri)**; the Court of Appeal in its ruling of 19.3.2021 has clarified execution has to occur at the High Court; the 4th respondent has illegally subdivided the suit land contrary to the Court of Appeal Consent and that the 1st, 2nd, 3rd, 4th and 5th respondent's as well as the 1st interested party are not opposed to the application and that the court has jurisdiction to enforce the execution of the Court of Appeal Order.

4. The applicant at paragraph 11 of the supporting affidavit states he has attached annexures marked **JMN "5" (1 – VI)**. Unfortunately the same are not in the court file.

5. The 1st, 2nd, 3rd and 5th respondents filed grounds of opposition dated 10.11.2021. It is stated the applicant has failed to disclose material evidence that similar applications were filed and determined namely:-

a) Misc. Civil Application No. 30 of 2003

b) Meru Judicial Review Case No. 31 of 2013 which was dismissed for non-attendance.

c) Meru High Court Civil Appeal No. 21 of 1990 with a ruling on 25.1.2018.

d) High Court Civil Appeal No. 21 of 1990 where orders issued on 26.9.199-0 were never re-opened or set aside by the Court of Appeal.

e) The application is resjudicata in view of the foregoing and lastly

f) Nyeri Court of Appeal ruling on 19.3.2021 clearly indicated the execution can only take place in the court from which the order appealed against emanated from which is the Meru Senior Resident Magistrate Civil Case No. 21 of 1990.

6. The applicant filed what he calls an opposition response dated 16.11.2021 to the grounds of opposition by the 1st, 2nd, 3rd and 4th respondents inter alia that the same is illegal, prejudicial, is contradicts Hon. Attorney General's own letter dated 23.12.2008, 1.11.2010, 9.1.2014 and 21.7.2020.

7. Further the applicant filed a notice dated 15.11.2021 requesting for the production of **Civil Case No. 22 of 1984 M'Twarugoji Kirimunya –vs- Samuel M'Murithi** for reference in decision making herein.

8. The applicant has invoked **Section 34** of the **Civil Procedure Act** to seek for the orders sought. **Section 34 (1)** relates to questions to be determined by the court executing a decree in which a decree was passed or their representatives to be determined by the court executing the decree and not through a separate suit.

9. The applicant has filed a separate proceeding instead of making his application in the files where the subject matter was determined namely **Civil Appeal No. 21 of 1990, Succession Case No. 351 of 2003, Civil Appeal No. 30 of 2003, Misc. Civil Appeal No. 19 of 2016 and Meru Senior Resident Magistrates Case No. 21 of 1990.**

10. While dismissing a similar application the Court of Appeal pronounced itself on the implication of **Section 34 of the Civil Procedure Act** which prohibits filing of plethora of separate suits or applications instead of making the application within the file in which the appeal arose. See **Kepue Ole Ngweta & Another –vs- Sarah Njoki Munge [2015] eKLR.**

11. Given the nature and implications of the orders sought, the court is unable to determine the same without the pleadings, judgment and records of the lower court so as to make the appropriate orders as to execution. The applicant must move to the mother file and apply for execution.

12. Further the respondents have indicated similar application as the instant application has been determined by the High Court Meru and the ELC court, though no copies have been attached for the court.

13. In the premises, the application is improperly before the court. The same is dismissed with no order as to costs.

14. File closed.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19TH DAY OF JANUARY, 2022

IN PRESENCE OF:

APPELLANT IN PERSON

KIETI FOR 1ST RESPONDENT

COURT ASSISTANT - KANANU

HON. C.K. NZILI

ELC JUDGE