



**Ngari & another v Muchanje (Environmental and Land Originating  
Summons 1 of 2018) [2025] KEELC 3669 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3669 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 1 OF 2018**

**AK BOR, J**

**APRIL 29, 2025**

**BETWEEN**

**CATHERINE MUTHONI NGARI ..... 1<sup>ST</sup> PLAINTIFF**

**GIBSON NYAGA NGARI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**GERALD KITHU MUCHANJE ..... DEFENDANT**

**RULING**

1. The Plaintiffs filed the application dated 24/1/2024 seeking to have the Land Registrar, Mbeere South Sub-County implement the survey report prepared by the County Surveyor Mbeere South Sub-County dated 27/1/2022 and filed in court on 14/7/2022. They also sought to have the Defendant bear the costs of the application.
2. The application was made on the grounds that the County Surveyor visited the land known as Mbeti/Gachururi/4645 (the suit land) pursuant to the court order of 14/10/2020. That in the presence of both the Plaintiffs and the Defendant together with his private surveyor, the County Surveyor identified and surveyed the land occupied by the Plaintiffs. They averred that the Registrar had failed or neglected to implement the survey report and that it was in the interest of justice that the decree dated 28/3/2019 be implemented in full so as to bring this matter to a close. The Plaintiffs swore the affidavit in support of the application and attached a copy of the survey report.
3. The Defendant filed a replying affidavit opposing the application. He accused the Plaintiffs of deliberately failing to serve him with the instant application in order to steal a match on him and get orders unopposed. He averred that the orders sought were contrary to the final decision of the court and the subsequent decree issued. Further, that the decree granted the Plaintiffs the right to be recognised and registered as proprietors of a portion of land comprising eight (8) acres over Mbeti/Gachururi/4645 only. Additionally, that the application seeks to compel the Land Registrar to



enforce an erroneous survey report granting them proprietorship of 6.2004 hectares which translates to approximately 15.5 acres, which the Defendant claimed was an injustice which would deprive him of his personal property.

4. He accused the Surveyor who prepared the survey report of going against the court orders and sought to have them compelled to redo the exercise in conformity with the decree. He contended that in the absence of a proper and accurate survey report capturing the Plaintiffs' 8-acre portion of land, the final orders and decree of the court could not be implemented. He urged the court to dismiss the application for being made in bad faith and for being frivolous and vexatious. He attached copies of the decree dated 28/3/2019, order dated 29/11/2019 and the survey report.
5. The court directed parties to file to file and exchange written submissions which it has considered. The Plaintiffs submitted that the Defendant did not dispute that he took part in the survey exercise while being aided by his son Peter Njagi and his private surveyor. That as the County Surveyor noted, the Defendant freely pointed out the boundaries of his adjacent parcel of land and there was no dispute about the land occupied by their family members. They contended that the Defendant had no legal interest in the suit land or any portion of the fenced off land identified by the County Surveyor. They claimed that the Defendant was trying to obstruct the implementation of the judgement and urged the court to allow the application.
6. In his submissions, the Defendant gave brief facts of the case and submitted that the application seeks orders that go contrary to public policy and the interests of justice by implementing an erroneous and incomplete survey report. He urged that a fresh survey should be conducted by the County Surveyor in the presence of all the parties and upon satisfaction by the parties on the outcome, it should be lodged with the Land Registrar for implementation.
7. The issue for determination is whether the Plaintiffs are entitled to the orders sought. The court notes that a final judgment was delivered on 28/3/2019 in which the Plaintiffs were declared to be entitled to eight (8) acres of land out of parcel number Mbeti/Gachururi/5. That judgment has not been set aside or appealed. What remains therefore is the execution of the decree. Litigation must come to an end and once a court has rendered its final determination and issued a decree, its role does not extend to micromanaging the execution process. Implementation of the judgment delivered on 28/3/2019 and the decree issued pursuant to the judgment must be carried out in strict conformity with the law. Should any issues arise in the course of the execution, the Plaintiffs are at liberty to seek assistance from the Office of the Attorney General who is the principal advisor to the Government pursuant to Article 156 (4)(a) of the Constitution. Parties may consider engaging that office for assistance on the implementation of the court's decree.
8. The application dated 24/1/2024 lacks merit and is dismissed with no orders as to costs.

**DELIVERED VIRTUALLY AT EMBU THIS 29<sup>TH</sup> DAY OF APRIL 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Njage Wanjeru for the Plaintiffs

Mr. M. Mwangi holding brief for Mr. G. Mwanza for the Defendant

Court Assistant- Diana Kemboi

