



**Njoroge v Njoroge & 5 others (Environment & Land Case  
36 of 2013) [2022] KEELC 82 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 82 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 36 OF 2013**

**EO OBAGA, J**

**APRIL 28, 2022**

**BETWEEN**

**PAUL FRANCIS NJOROGE ..... PLAINTIFF**

**AND**

**ANN NDUTA NJOROGE ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH KINYUA MWANGI ..... 2<sup>ND</sup> DEFENDANT**

**PAUL OCHIENG ODEK ..... 3<sup>RD</sup> DEFENDANT**

**DAVID NGANGA KINYENI ..... 4<sup>TH</sup> DEFENDANT**

**DANIEL WANYOIKE KIGUMI ..... 5<sup>TH</sup> DEFENDANT**

**GICHUHI NJOROGE KAMAU ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 15<sup>th</sup> November, 2020 in which the 2<sup>nd</sup> Defendant/Applicant seeks Police assistance to execute a decree which was allegedly issued in this matter. The Applicant is the registered owner of LR. No Uasin Gishu/Kimumu Scheme/1643. The Plaintiff/Respondent is the registered owner of LR. No Uasin Gishu/Kimumu Scheme/1642.
2. In or around the year 2001, the Respondent and the 2<sup>nd</sup> Applicant together with others had boundary disputes. The 2<sup>nd</sup> Applicant and others filed a claim under the *Land Disputes Tribunal Act* no. 18 of 1990 (Now repealed) for the determination of the boundary disputes. The elders heard the dispute and gave their judgment on 22<sup>nd</sup> January 2002 in which the elders directed among other things that resurvey of the affected plots was to be done in accordance with the way the parties were occupying on the ground.



3. The Respondent did not prefer an appeal to the Provincial Appeals Committee as was provided for in the repealed Act. The elders verdict was adopted as a judgment of the court in award No. 23 of 2002 by the Chief Magistrate's Court at Eldoret.
4. On 25<sup>th</sup> November, 2009, the Respondent filed HCCC No. 191 of 2009 in which he sought declaratory orders that the verdict of the Land Disputes Tribunal was a nullity for want of jurisdiction. The case was transferred to the Environment and Land court in 2013. The case was fully heard and was dismissed in a judgment delivered on 4<sup>th</sup> October, 2019.
5. The 2<sup>nd</sup> Applicant has now made this application in which he seeks Police assistance to execute the decree which was allegedly issued in this case. The Applicant argues that the Respondent has encroached on to part of his land which he has fenced off and has denied him use of the same since 2018. It is on this basis that he seeks Police Assistance to execute the decree.
6. The Applicant's application was opposed by the Respondent based on a replying affidavit sworn on 29<sup>th</sup> November, 2021. The Respondent contends that there is no decree which is capable of being executed in these proceedings and that if the Applicant is keen on executing any decree, that can only be done before the lower court.
7. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. The only issue for determination in this matter is whether there is a decree capable of being executed as to call for Police assistance. It is clear from the background of this case that the Respondent's case was dismissed. That was a negative order which is incapable of being executed. The Applicant and his co-defendants can only execute for costs.
8. The only execution capable of being carried out is the one arising from award No. 23 of 2002 if the same is not stale. There is no decree in these proceedings capable of being executed. I find that the Applicant's application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 28<sup>TH</sup> DAY OF APRIL, 2022**

**E. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Momanyi for Plaintiff/Respondent.

Ms. Kinyua for Mr. Chepkwony for 2<sup>nd</sup> Defendant/Applicant

Court Assistant -Albert

**E. OBAGA**

**JUDGE**

