



Karanja v Chief Land Registrar & 2 others; Njenga (Proposed Interested Party) (Environment & Land Petition 15 of 2018) [2022] KEELC 3072 (KLR) (30 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3072 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND PETITION 15 OF 2018**

**BM EBOSO, J
MAY 30, 2022**

BETWEEN

MIRIAM NJOKI KARANJA PETITIONER

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

THIKA DISTRICT LAND REGISTRAR 3RD RESPONDENT

AND

STEPHEN NJOROGE NJENGA PROPOSED INTERESTED PARTY

RULING

1. On October 15, 2018, Miriam Njoki Karanja brought this petition against the chief land registrar, the Attorney General, and the Thika land registrar. She sought, among other prayers, a declaration that she was the lawful proprietor of land parcel number Ruiru/Ruiru East Block 2/3690. Further, she sought an order cancelling alterations made to the parcel register. She also sought an order cancelling all the subdivisions relating to the said land. She did not, however, join as respondents or/ interested parties, the person or persons in whose name(s) the subdivisions were registered.
2. Gacheru J heard the petition *ex parte* and rendered a judgment in the petition on March 5, 2020. She granted the petitioner the orders sought in the petition. The decree was, however, not extracted until November 24, 2020.
3. On or about February 8, 2021, Stephen Njoroge Njenga brought a notice of motion dated February 7, 2021 seeking to be joined in the suit as an interested party. He further sought an order setting aside the decree of the court. The said application is the subject of this ruling.



4. The application was supported by the applicant's affidavit sworn on February 7, 2021. It was canvassed through brief written submissions dated December 2, 2021, filed through the firm of Lameck J Mboha Advocate. His case is that he owns land parcel number Ruiru/Ruiru East Block 2/23583 which is a subdivision out of parcel number Ruiru/Ruiru East Block 2/3690. He contends that he purchased the said subdivision from Justus Muindu Mue who was the registered proprietor thereof. He was registered as proprietor of the subdivision on November 4, 2020. He contends that the judgment rendered on March 5, 2020 and the subsequent decree issued on November 24, 2020 affect him adversely yet he was not a party to the suit. He exhibited a copy of the parcel register relating to the said subdivision. It reveals that the decree of the court was recorded in the parcel register relating to the subdivision on December 17, 2020 as entry number 5.
5. The petitioner opposes the application. Her case is that the land registrar failed to issue her with an official search hence she was not aware of the identities of the alleged registered owners of the land and any subdivision out of it. She faults the land registrar for withholding information from her. Her position is that the applicant's remedy lies in filing a suit against Justus Muinde Mue and the land registrar. She urges the court to dismiss the application.
6. I have considered the application and the parties' brief written submissions on the application. I have also considered the relevant legal framework and jurisprudence. The single question falling for determination in this application is whether the applicant has established a proper basis for setting aside the *ex parte* judgment and decree entered in this petition.
7. It does emerge that the parcel register relating to the subdivision was opened on April 27, 2017. The transfer relating to the applicant was effected on November 4, 2020. The logical conclusion is that the present applicant would perhaps not be the one making this kind of application had the decree out of the judgment rendered on March 5, 2020 been promptly extracted and registered against the relevant parcel registers. However, because the petitioner did not cause the decree to be extracted and registered, a transfer was registered on November 4, 2020 vesting the subdivision in the name of the applicant.
8. It does also emerge from the parcel register relating to the subdivision that the parcel register relating to Ruiru/Ruiru East Block 2/3690 was closed and new subdivision registers opened. The subdivision register relating to Ruiru/Ruiru Block 2/23583 was opened in the name of Justus Muindu Mue on April 27, 2017. Mr Mue was similarly not joined as a party to the petition.
9. The failure to join the registered proprietor(s) as a party or parties to the petition has resulted in the present scenario where the court is being asked to set aside the *ex parte* judgment and grant an order of joinder. This scenario would probably not have unfolded at this stage had the land registrar accorded this dispute the deserved seriousness and filed a response placing before the trial judge all registration records relating to the suit land and all the subdivisions parceled out of the suit land. It is not lost to the court that serious allegations had been made against the land registrar to the effect that the land registrar had refused to provide the petitioner with relevant searches.
10. Given the above circumstances, the court is of the view that Justus Muindu Mue was a necessary party for the effectual and complete adjudication and settlement of all the questions in this petition. Further, the court is satisfied that Stephen Njoroge Njenga is a necessary party to this petition given that one of the subdivisions parceled out of the suit land is registered in his name. I will in the circumstances set aside the *ex parte* judgment, join the duo as respondents, and preserve all the subdivisions parceled out of Ruiru/Ruiru East Block 2/3690 for a period of twelve (12) months during which period the petitioner will be expected to prosecute this petition a fresh. I will also order the Land Registrar to file an affidavit in this suit exhibiting certified land registers relating to Ruiru/Ruiru East Block 2/3690 and all the subdivisions parceled out of the said land.



11. In the end, the application dated February 7, 2021 is disposed as follows:

- a. Justus Muindu Mue and Stephen Njoroge Njenga are joined in this petition as 4th and 5th respondents respectively.
- b. The *ex parte* judgment herein dated March 5, 2020 and the resultant decree issued on November 24, 2020 are hereby set aside.
- c. For a period of twelve (12) months from today, no dealings shall be registered in the parcel register relating to Ruiru/Ruiru East Block 2/3690 together with all the parcel registers relating to all the subdivisions parceled out of the said land.
- d. No developments or further developments shall take place on the above land for a period of 12 months from today.
- e. The 5th respondent shall file a response to the petition within 7 days.
- f. The petitioner shall serve Justus Muindu Mue with the petition within seven (7) days.
- g. The relevant land registrar is ordered to present to the court within 15 days from today an affidavit exhibiting certified copies of the land register relating to Ruiru/Ruiru East Block 2/3690 and all subdivision registers relating to the land surveyed and registered out of the said parcel.
- h. The court registry shall extract and serve a copy of this order on the land registrar within two working days.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 30TH DAY OF MAY 2022

B M EBOSO

JUDGE

In the presence of: -

Mr Munene for the petitioner

Court assistant: Ms Lucy Muthoni

