



**King'oo & 11 others v Nguku & 4 others; Kamia & another (Interested Parties)
(Administrators of the Estate of Amos Kamia Nguku) (Environment and Land
Case Civil Suit 243 of 2015) [2022] KEELC 3548 (KLR) (24 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3548 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT 243 OF 2015
CA OCHIENG, J
MAY 24, 2022**

BETWEEN

**SIMON KILINGE KING'OO 1ST PLAINTIFF
ROBERT KYALO MUEMA 2ND PLAINTIFF
BENSON MAKAU MWANGANGI 3RD PLAINTIFF
PETER MBINDYO MUTINDA 4TH PLAINTIFF
JOSEPH KIVULA WAMBUA 5TH PLAINTIFF
JULIUS MUTUKU KYENGO 6TH PLAINTIFF
DORCAS HEDRICK KIOKO 7TH PLAINTIFF
PATRICK MAINGI MUTIE 8TH PLAINTIFF
TITUS MAKAU KING'OLA 9TH PLAINTIFF
MUTHEU MASUNI 10TH PLAINTIFF
PATRICK WAMBUA 11TH PLAINTIFF
MUTISYA KAMIA 12TH PLAINTIFF**

AND

**AMOS KAMIA NGUKU 1ST DEFENDANT
MUENI KAMIA 2ND DEFENDANT
MUTIO KAMIA 3RD DEFENDANT
MUNYAKA KAMIA 4TH DEFENDANT
ROBERT KAMIA 5TH DEFENDANT**



AND

ANTHONY KUVIKA KAMIA INTERESTED PARTY
DAVID NZOMO KAMIA INTERESTED PARTY
ADMINISTRATORS OF THE ESTATE OF AMOS KAMIA NGUKU

RULING

1. What is before court for determination is the plaintiffs' Notice of Motion application dated July 28, 2021 brought pursuant to section 98 of the *Civil Procedure Act*; section 5 of the *Judicature Act* and section 28 of the *Contempt of Court Act*. The applicants seek the following orders:
 1. Spent
 2. That all injunctions, restrictions, cautions, caveats or inhibitions of whatever nature registered in Machakos land registry against land parcel number Mavoko Town/Block 3/2668 except the decree of this court dated January 25, 2019 be removed and/or deregistered.
 3. That the Machakos land registrar be restrained from accepting, approving or registering any injunctions, restrictions, cautions, charges, caveats, inhibitions or any other encumbrances of whatever nature against land parcel number Mavoko Town/Block 3/2668 until the decree of this court dated January 25, 2019 is registered and title deed issued to that effect.
 4. That this court do issue an order directed to land registrar Machakos to register the plaintiffs as proprietors of land parcel number Machakos Town/Block 3/2668 and do all that is necessary to give effect to the judgment and decree of this court dated January 21, 2019.
 5. That the deputy registrar of this court do execute, sign and process all documents required to be signed, executed and processed by the defendants to give effect to this court's judgment by registering the plaintiffs as proprietors of parcel of land number Mavoko Town/Block 3/2668.
 6. That this court do issue summons directed to the land registrar Machakos and the defendants to attend court and show cause why contempt of court proceedings should not be taken against them.
 7. That the land registrar Machakos and defendants be cited for contempt of court and be committed to jail for six months and/or be punished as the court may deem just for being flagrantly contemptuous and wilfully disobedient of this court's orders embodied in its decree dated January 25, 2019.
 8. That the land registrar Machakos and defendants do pay the costs of this Application.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Julius Mutuku Kyengosworn on July 20, 2021. In the said grounds the plaintiffs contend that there exists a court decree directing the Machakos land registrar to register them as the proprietors of parcel of land known as Mavoko Town/Block 3/2668 which decree was served upon the said land registrar on May 5, 2019. They aver that the land registrar has disobeyed the orders contained in the said decree by failing to register the plaintiffs as the proprietors of parcel of land known as Mavoko Town/Block 3/2668 for the last two years. Further, that the said court decree has never been reviewed, vacated or set aside. They reiterate that the act of the land registrar and the defendants are in contempt of court. They explain that, from the conduct of the land registrar and the defendants, there is no likelihood



that the defendants will sign or execute the necessary documents and instruments to give effect to this court's judgment and Decree.

3. The interested parties opposed the application by filing a replying affidavit sworn by David Nzomo Kamia, where he explains that in the judgment/decree dated January 25, 2019, this honourable court awarded a forty (40) acres parcel of land being Mavoko Town Block 3/2668 to the plaintiffs, and ordered the Machakos land registrar to register them as proprietors thereof. Further, being dissatisfied with the said judgment/decree dated January 25, 2019, they instructed their advocates on record to file an Appeal against the whole judgment in the Court of Appeal, being Civil Appeal no 377 of 2019. He states that together with the 1st appellant herein, they further instructed their advocates on record to apply for stay of execution pending appeal in Machakos ELC Case no 243 of 2015 which application was dismissed. He confirms that the 1st interested party/applicant has subsequently passed away. Further, upon the sudden demise of the 1st interested party, the family has been thrown into mourning and disarray hence the delay in giving instructions to their advocates on record. He avers that he has since instructed their advocates on record to file an application seeking stay to the execution of this honourable court's judgment, before the Court of Appeal, which application is yet to be heard as well as determined on its merits. He insists this court's orders cannot be issued in vain and he believes he has an arguable appeal with high chances of success. He claims this court cannot issue orders touching on matters that are pending hearing and determination before a superior court. He sought for the instant application to be dismissed with costs.
4. The defendants never filed any response to the instant application which was canvassed by way of written submissions.

Analysis and determination

5. Upon consideration of the Notice of Motion application dated July 28, 2021 including the respective affidavits and rivalling submissions, the following are the issues for determination: Whether the restriction, caveat, inhibition or caution registered against land parcel number Mavoko Town/Block 3/2668 should be lifted. Whether the deputy registrar should be directed to execute, sign and process the necessary documents to give effect to the judgement and decree of this court. Whether the land registrar Machakos should be directed to implement the judgement and decree of this court by registering the plaintiffs as owners of 40 acres of land from Mavoko Town/Block 3/2668.
6. I will deal with these issues jointly.

The plaintiffs in their submissions reiterated their averments as per the instant application and contended that any restrictions/cautions should be lifted and the deputy registrar directed to execute as well as process the necessary documents in order to give effect to the judgement herein. Further, that the Machakos land registrar and the 5th defendant should be cited for contempt of court and summons issued to that effect. To buttress their averments, they relied on the following decisions: [Samuel M N Mweru & Others Vs National Land Commission & 2 Others](#) (2020) eKLR and [Cecil Miller Vs Jackson Njeru & Another](#) (2017) eKLR.
7. The interested parties in their submissions reiterated their averments as per the replying affidavit and insisted that the suit property being Mavoko Town/Block 3/2668 forms part of the estate of the late Amos Kamia Nguku. Further, that succession proceedings in Machakos High Court Succession Cause no 365 of 2012, in respect to the said estate is still ongoing. They confirmed that the restrictions were placed on the suit property for preserving the estate pending its distribution to the beneficiaries. They contended that this court does not have jurisdiction to handle this matter and that the implementation of the judgement dated January 25, 2019 can only be effected by the succession court. To support



their arguments, they relied on the following decisions: *Re Estate of Alice Mumbua Mutua (deceased)* (2017) eKLR; *Munyasya Mulili & 3 Others Vs Sammy Muteti Mulili* (2017) eKLR and *Re Estate of John Nthiwa Nziola (Deceased)* (2021) eKLR.

Before I proceed to make a determination of the issues above, I wish to highlight the final orders in the judgement dated January 25, 2019, sought to be enforced vide this application:'

- a. The plaintiffs are entitled by virtue of adverse possession in their respective shares of parcel of land known as Mavoko Town /Block 3 /2668.
 - b. Machakos land registrar to register the plaintiffs as proprietors of the parcel of land known as Mavoko Town/ Block 3/2668.
 - c. Each party to bear his/her own costs.
8. A decree dated April 12, 2019 was extracted to that effect and served upon the land registrar, Machakos on May 5, 2019. Further, from the court record, I note the interested parties' application for stay of execution pending appeal dated August 9, 2019 was dismissed on September 18, 2020. The interested parties insist the decree cannot be executed due to the pendency of the Machakos High court succession Cause no 365 of 2012 wherein the suit property being Mavoko Town/ Block 3/2668 forms part of the estate of the late Amos Kamia Nguku. Further, that they have filed another application seeking stay pending appeal in Civil Appeal no 377 of 2019 which is yet to be determined. From these highlights and for the avoidance I wish to note that there is no court order staying execution of the judgment including decree herein which was issued by a court of competent jurisdiction.

Section 98 of the *Civil Procedure Act* provides that:

Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it."

9. While Section 78 (1) of the *Land Registration Act* provides that:

The registrar may, at anytime and on application by any person interested or at the registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order that the removal or variation of a restriction. (2) Upon the application of a proprietor affected by a restriction, and upon notice to the registrar, the court may order a restriction to be removed, varied, or other orders as it deems fit, and may make an order as to costs."

10. In this instance, the plaintiffs have sought for removal of the caution, inhibition, caveat or restriction over the aforementioned suit property and for the Machakos land registrar to enforce the judgment of the court which was issued on January 25, 2019. It has emerged that the land registrar, despite being duly served with the decree on May 5, 2019 has declined to remove the said restriction nor proceed to effect transfer of the suit property to the plaintiffs as per the impugned court order.
11. It is trite that court orders are sacrosanct and where there is no other order barring the implementation of a judgment and decree, as a court I do not see any reason why the land registrar should not implement



it. The interested parties' claim the said judgment and decree should not be implemented unless the aforementioned Machakos Succession Cause is determined. However, I beg to disagree and it is my considered view that since there is a valid decree from a court of competent jurisdiction, the terms therein are supposed to be taken into consideration before the aforesaid estate is distributed to the deceased beneficiaries.

It is against the foregoing while relying on the legal provisions cited above that I find that the Plaintiffs are indeed entitled to the orders as sought in this instant application which I find merited. I will proceed to make the following final orders:

- i. That the restriction, inhibition, caveat or caution registered against land parcel number Mavoko Town/Block 3/2668 should be lifted forthwith.
- ii. That the deputy registrar, Environment and Land Court Machakos be and is hereby directed to execute, sign and process the necessary documents in respect to land parcel number Mavoko Town/Block 3/2668 to give effect to the judgement and decree of this court dated January 25, 2019.
- iii. The land registrar Machakos be and is hereby directed to implement the judgement and decree of this court dated January 25, 2019 by registering the plaintiffs as owners of 40 acres of land from LR no Mavoko Town/Block 3/2668 within ninety (90) days from the date hereof, failure of which he will be cited for contempt.
- iv. The costs of this application are awarded to the plaintiffs to be borne by the interested parties.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 24TH DAY OF MAY, 2022

CHRISTINE OCHIENG

JUDGE

