



REPUBLIC OF KENYA



KENYA LAW
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**Punyua v Ntamorua (Environment and Land Appeal
E004 of 2021) [2022] KEELC 3619 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3619 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND APPEAL E004 OF 2021**

**CG MBOGO, J
MAY 19, 2022**

BETWEEN

KASAINA OLE PUNYUA APPLICANT

AND

KOYIAKI NTAMORUA RESPONDENT

RULING

1. What is before this court for determination is the Notice of Motion Application dated 17th May, 2021 filed by the applicant and which is expressed to be brought pursuant to Order 42 and 51 of the *Civil Procedure Rules*, Section 13 of the *Environment & Land Court Act* and Article 40 of *the Constitution* seeking the following orders: -
 1. Spent.
 2. That pending the hearing and determination of this application inter partes, this honourable court be pleased to grant stay of the ex-parte orders issued on 20th November, 2019 by Hon. W Juma, Chief Magistrate, Narok Law Courts in Miscellaneous Application Number 26 of 2013.
 3. That cost of this application be provided for.
2. The application is premised on the grounds on the face of it and more particularly as contained in the supporting affidavit of the applicant herein sworn on 17th May, 2021. The applicant deposed that he is the registered proprietor of Cis Mara/Nairagie Enkare/354 and that on 20th August, 2019, the Magistrate's Court issued final orders in Miscellaneous Application No. 26 of 2013 that the parties to have the dispute resolved by the District Land Registrar and that the court does not have jurisdiction to handle the matter and therefore it downed its tools.
3. The applicant further deposed that the District Land Registrar was required to comply with existing laws in regard to fair hearing and administrative action for all parties concerned. In addition to the



order cited above, the respondent made an application dated 18th November, 2019 which the same court granted orders that the applicant herein not to interfere with the Registrar's work in compliance with the ruling made on 30th April, 2019 and that the OCPD Narok Police Station do provide security during the ground visit for marking boundaries. It is the applicant's averment that he was never served with the application that culminated to the issuance of the orders.

4. The applicant deponed that the law requires that before any decision is made, each party must be given an opportunity to be heard. The applicant further deponed that he was allocated the suit land in the year 1975 upon conversion of the Group Ranch to individual land and that the respondent was allocated CisMara/Nairagie Enkare/ 353 which so far he has sold the entire land and has subsequently and fraudulently misrepresented himself to other buyers that part of his land belongs to him. He further deposed that sometime in the year 2005, the respondent brought a private Surveyor to the suit without his knowledge or his neighbours knowledge hence infringing on his right to property in which the private surveyor prepared a map indicating that the respondent's land stretches into his land with an increase of 20 acres. Thereafter the surveyor filed an amended map to the Land's registry for amendment of title. That the Land's Registrar upon receipt of the amended map issued an amended title without conducting due diligence and that upon receipt of the amended title, the respondent made an application to the Land's Registrar for fixing of boundaries on the suit land. That since demarcation of the suit land in 1975, the respondent has never raised any complaint.
5. The applicant further contends that the Land's Registrar has never in writing ordered the demarcation within specified time of any boundary mark of the land adjacent that is 389,354,353 and 355 and that the Surveyor may rectify the line or position of a boundary but subject to approval by the Land Registrar.
6. I have carefully analysed the application as drafted and the same is fatally defective for the following reasons: -
 1. It has been overtaken by events;
 2. There is no judicial authority to be exercised upon such an application.
7. Prayer 2 of the application reads as follows: - 'That pending the hearing and determination of this application inter-partes, this honourable court be pleased to grant stay of the ex-parte orders issued on 20th November, 2019 by Hon. W Juma, Chief Magistrate, Narok Law Courts in Miscellaneous Application Number 26 of 2013.'
8. The wording of the above prayer was to the effect that before service of the application is effected upon the respondent, then the court be pleased to grant stay of the ex-parte orders issued on 20th November, 2019.
9. When the matter was in court under Certificate of Urgency on 19th May, 2021, the court certified the application as urgent and directed service upon the respondent. The automatic result being that prayer 2 which was directly intertwined with prayer 1 was also spent.
10. In my view, and in the court's exercise of its jurisdiction not to grant prayer number 2, then the application became lifeless. As such there is nothing in this application which the court can exercise judicial authority over.
11. Arising from the above, the Notice of Motion application dated 17th May, 2022 is fatally defective and the same is struck out with no orders as so costs.

DATED, SIGNED AND DELIVERED VIA EMAIL ON 19TH MAY, 2022.



MBOGO C.G

JUDGE

19/5/2022

In the presence of: -

CA: Timothy Chuma

