



**Jerubet v Kibwambok & another (Environment & Land Case
106 of 2021) [2022] KEELC 3288 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3288 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 106 OF 2021
MN MWANYALE, J
JUNE 23, 2022**

BETWEEN

EMILY JERUBET PLAINTIFF

AND

BARNABA KIBWAMBOK 1ST DEFENDANT

JEREMIAH KIBIWOT KOGO 2ND DEFENDANT

RULING

1. Before court for determination is the application dated January 18, 2022, which seeks orders that;
 - i) The County Land Surveyor, Nandi to establish the exact acreage of all that parcel of land originally known as LR No Nandi/kipkaren Salient/334, and all its resultant titles and file a report on the same within such period as shall be directed by the Court.
 - ii) That given the acrimony on the ground the officer in charge Kipkaren Salient Police Post do provide security for enforcement of prayer one above.
2. The application is based on ground interalia;
 - a) Plaintiff is the legal owner of LR No. Nandi/kipkaren Salient787 and 788
 - b) The aforesaid title are subdivisions from Nandi/kipkaren Salient/334 which originally measured approximately 34.0 Ha or 73 acres.
 - c) Pursuant to a survey ordered by the Court on 1/7/2020, to establish boundaries between Nandi/kipkaren Saleint786, 787 and 788 the survey report confirmed that the acreage of the above titles were less on the ground as compared to their sizes on the title document.
 - d) There is thus need to confirm the acreage of Nandi/kipkaren Saliant/334 and all resultant titles before matter can be set down for hearing on merit.



- e) That the survey to subdivide CR No Nandi/kipkaren Salient/334 was done without Plaintiff participation.
 - f) That the resurveying the mother tile LR NO. Nandi/kipkaren Salient/334 will ascertain its true acreage and that of its resultant titles price and for all.
3. When the matter came up before court on 4/4/2022, Mr. Miyiinda for the 1st defendant was present and confirmed service of the application before court, and requested for 14 days to file the replying affidavit from the said date.
 4. The court issued directions, in terms that;
 - i) The 1st defendant was to file to replying affidavit within 14 days from 4/4/2022.
 - ii) Corresponding leave was granted to the applicant to file a further affidavit if need be within 7 days of service.
 - iii) The matter was to proceed via written submissions with the plaintiff/applicant filing submissions within 7 days after filing of the further affidavit and respondent had 7 days after service of the plaintiff's submissions. Both sets of submissions were to be on record by May 24, 2022, and ruling reserved for 23/6/2022.
 5. From the record, the defendant/respondent did not file their replying affidavit and hence no party filed the submissions either.
 6. Consequently the application is herein an opposed, but the court shall nonetheless consider it to see whether it deserves being allowed.
 7. The application herein is supported by the supporting affidavit of the applicant who reiterates the grounds cited in paragraph 2 (a – f) above.
 8. In the said affidavit, the deponent has annexed annexures, showing copies of the title deeds for Nandi/kipkaren/787 and 788.
 9. A copy of the green card equally shows that the original property was Nandi/kipkaren/334 measured approximately 34.0
 10. In the survey report made pursuant the court order dated 29/10/2020, annexed to the supporting affidavit. The parcels number 786,787, and 788 were subdivisions of 537. The report indicates that the total acreage for 537 as per the title was 10.3 Ha (24.45 acres) but was found to be 17.966 acres (7.484Ha)
 11. That the survey that resulted into the 3 new titles 786.788 and 789 did not identify the anomaly which resulted to the acreage of 537 acres to be less by 7484 acres.
 12. The application before Court thus seeks to correct the anomaly by establishing the actual acreage of Nandi/kipkaren/334 which resulted to 537 among other titles.
 13. Although the application is unopposed, the court notes that allowing the application will cause hardship to other persons who have gained proprietary interests in the subdivisions of Nandi/kipkaren/saliant/334 as was originally, yet the said parties are not parties to this suit.
 14. The parties to the suit the defendants herein have their subdivision from 537 which was also a subdivision of 334.



15. In light of the fact that the other proprietors of the neighboring parcels have not been joined in the proceedings, allowing the application will be tantamount to condemning them unheard.
16. As a result of the findings above, the court declines to issue the orders sought, since the owners are not parties to this suit, and the prayers in the plaint are confined to;
 - i) the parties to this suit, and a
 - ii) resurvey of boundaries of Nandi/kipkaren Salinet 787 and 788 and not Nandi/kipkaren Salient 334.
17. Application disallowed, with no orders as to costs.

DATED AT KAPSABET THIS 23RD DAY OF JUNE, 2022.

HON. JUSTICE M. N. MWANYALE

JUDGE.

