



Muntet & 9 others v Naisauwa & another (Environment & Land Miscellaneous Case E002 of 2022) [2022] KEELC 144 (KLR) (16 June 2022) (Ruling)

Neutral citation: [2022] KEELC 144 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND MISCELLANEOUS CASE E002 OF 2022**

CG MBOGO, J

JUNE 16, 2022

IN THE MATTER OF NAROK ELC NO. 83 OF 2017

BETWEEN

TOBIKO OLE MUNTET 1ST APPLICANT
KIRIMONI OLE MUNTET NAMPUSHI 2ND APPLICANT
TOIPANI OLE MUNTET 3RD APPLICANT
TIMOTHY LEO OLE MUNTET 4TH APPLICANT
RERIN OLE MUNTET 5TH APPLICANT
JAMES SIMIREN OLE NAMPOSHI 6TH APPLICANT
LETOWUON OLE MUNTET 7TH APPLICANT
TILAL OLE NAMPOSHI MUNTET 8TH APPLICANT
SAMAIRE OLE MUNTET 9TH APPLICANT
NAIKISI OLE MUNTET 10TH APPLICANT

AND

WILLIAM NAISAUWA 1ST RESPONDENT
LIRIAN OLE SEKENTO 2ND RESPONDENT

RULING

1. The 1st to 10th respondents filed a notice of motion application dated February 28, 2022 brought pursuant to Order 51 Rule 1 of the [Civil Procedure Rules](#), Sections 152A, 152B, 152E, 152F and 152 G of the [Land Act](#) and Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Section 24 of the [National](#)



Police Service Act seeking the following orders: -SpentThat this honourable court be pleased to issue an order of eviction against the respondents, by themselves, their agents and /or servants from land parcel forming part of Cis-Mara/Enare Boolkesi 1/1-14.That the officer commanding police division (OCPD) and the Officer Commanding Station (OCS) Ntulele Police Station be authorized to enforce compliance of the court orders.That costs of the application be borne by the respondents.

2. The application is premised on the grounds on the face of it and on the supporting affidavit of Tobiko Ole Muntet (the 1st applicant herein) sworn on 28th February, 2022. The 1st respondent deposes that Narok ELC 83 of 2017 was heard on merits and determined vide a judgment delivered by my brother Justice Kullow on July 23, 2021 and thereafter a decree was issued on August 16, 2021 and to the best of his knowledge the decree has not been set aside and if any appeal has been preferred, it does not automatically stay the orders of the court and as such since the judgment did not cancel their titles, they remain the registered owners of the suit land and, are, therefore, entitled to enjoy its ownership and possession. Further, that the respondents continue to occupy and cultivate part of the suit land without any colour of right which actions amount to an infringement of their rights to ownership and occupation of the suit land and it is important for peace to prevail during the eviction exercise necessitating the need for police assistance.
3. The application was opposed by the 1st respondent through a replying affidavit sworn on March 30, 2022 in which the 1st respondent deposed that the applicants are engaging in mischief and non-disclosure of material facts by failing to disclose the existence of his application for injunction pending hearing and determination of the appeal and wrongly misleading the court that that the 1st respondent has not sought for any conservatory orders.
4. The 1st respondent further deposed that there is a current appeal before the Court of Appeal in Nakuru and if this court grants eviction orders, his appeal will be rendered nugatory. That the suit land has been his home since the year 1992 where he has carried out substantial developments which, if eviction is granted, his family will be rendered homeless and will suffer unwarranted loss, pain and suffering. In conclusion, the 1st respondent deposed that his application pending appeal is merited. The 1st respondent relied on a copy of a notice of appeal filed on August 2, 2021, a copy of a memorandum of appeal that is not legible and photographs.
5. Both parties did not file written submissions. Be that as it may, I have considered the application, replying affidavit and the documents in support thereof and the issue for determination is whether the application dated February 28, 2022 has merit.
6. It is not in dispute that this court delivered Judgment on 23rd of July, 2021 in ELC 83 of 2017. The applicants are of the view that owing to the dismissal of the suit, the court did not order a cancellation of their titles and, therefore, they remain the registered owners of the suit land. On the other hand, the 1st respondent, is apprehensive that if this application is allowed, the appeal filed at the Court of Appeal will be rendered nugatory and for that reason, eviction orders should not be granted. As per the documents relied on by the 1st respondent, there is a Notice of Appeal dated July 23, 2021 and signed by the Deputy Registrar on July 27, 2021 and attached to it, is a Memorandum of Appeal. In my view, an appeal is deemed filed when Notice of Appeal has been given. It would also be fair for purposes of preserving the subject matter in dispute currently at the Court of Appeal to decline this application. This is meant to afford the 1st respondent to exercise his undoubted right of appeal and not to render the appeal nugatory.
7. Arising from the above, I am hesitant to allow the notice of motion application dated February 28, 2022 and the same is hereby dismissed with no orders as to costs. It is so ordered.



DATED, SIGNED AND DELIVERED VIA EMAIL ON 16TH JUNE, 2022.

MBOGO C.G

JUDGE

In the presence of: -

CA: Timothy Chuma

Applicants:

DELIVERED VIA EMAIL ON 16TH JUNE, 2022

