



**Orori (Suing for and on behalf of the Estate of Jeremiah Orori Nyamwaro - Deceased) v Nyakambi (Sued as the administrator of the Estate of Nyakambi Nyamwaro - Deceased) (Environment & Land Case 63 of 2021) [2022] KEELC 3269 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3269 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 63 OF 2021**

**JM KAMAU, J  
JULY 28, 2022**

**BETWEEN**

**ALFRED NYABUTI ORORI ..... PLAINTIFF  
SUING FOR AND ON BEHALF OF THE ESTATE OF JEREMIAH ORORI  
NYAMWARO - DECEASED**

**AND**

**ALEX NYAMWARO NYAKAMBI ..... DEFENDANT  
SUED AS THE ADMINISTRATOR OF THE ESTATE OF NYAKAMBI  
NYAMWARO - DECEASED**

**RULING**

1. This court pronounced judgment on April 28, 2022 in the following terms: -

“1. The plaintiff’s claim of a declaration that the deceased Jeremiah Orori Nyamwaro and Nyakundi Nyamwaro were equal and joint owners of 1 share in Kerumbe Farm 32.61 Hectares or thereabout in Land Parcel No Kerumbe Farm 950/19, an order directing the transfer of half of the said 1 share i.e 16.3 hectares to the plaintiff for and on behalf of the estate of Jeremiah Orori Nyamwaro was dismissed with costs.

2. A permanent injunction was granted in respect to any other portion beyond the 10 Acres and the plaintiff’s homestead which had been initially given to him by the defendant’s family.

2. The plaintiff having been dissatisfied with this judgment filed a notice of appeal on May 6, 2022 notifying this court of his intention to file an appeal against the whole of the said decision. He also



requested for the supply of an uncertified copy of judgment for appeal purposes as well as a certified copy of Judgment on May 13, 2022. The notice of appeal was filed timeously.

3. On June 13, 2022 the plaintiff prayed for an order of stay of execution of the aforesaid decree pending the intended appeal at the Court of Appeal Kisumu and in the alternative the maintenance of the status quo to prevail on the suit land. The grounds of the application are set out on the grounds supporting the application and the affidavit of Alfred Nyabuti Orori, the applicant herein sworn on June 13, 2022 which in a nutshell are that the applicant has lived on the suit land since 1967, that the act of dispossessing the applicant would likely cause a breach of the peace and that the applicant stands to suffer loss and damage and that the applicant hired over 50 goons to cut down trees on the suit land and erected an illegal and irregular fence. The respondent on the other hand swore an affidavit on June 20, 2022 and denied that he hired goons. But he admitted that he hired about 20 people and not goons to reinstate the boundary with the aid of a Surveyor limiting the applicant and his family to the 10 acres confirmed by the court. He finally deponed that he was acting on the confirmed grant of Kisii Succession Cause No 439 of 2009 which vested the land to his late father's dependants.
4. I allowed both counsel to make oral submissions on the application in court after which I retired to write this ruling.
5. In the first place, I wish to fault the applicant for accusing the respondent of hiring over 50 goons to dispossess him out of the suit land and cutting down trees. The definition of a goon is: -

“A goon is a hooligan, thug, bozo, bruiser or a dope, a violent, aggressive person who is hired to intimidate or harm people, a man who is paid to threaten or hurt people.”
6. How did the applicant conclude that the people employed by the respondent were goons? What parameters did he apply to determine that? The court gave judgment to the respondent to the effect that anything that falls outside the 10 acres occupied by the respondent in LR No. Kerumbe Farm 950/19 belongs to the respondent under the doctrine of *quid plantatur solo solo cedit*. How else would the respondent cut down those trees if he wished to do so? Was he going to use Vatican employees? Or was he expected to plead with the applicant to fell down the trees and deliver them to the respondent?
7. Secondly, when the applicant says that the actions of the respondent are likely to cause a breach of the peace, does he expect the court not to carry out its exercise or does he prefer that court decrees are not implemented? Is he suggesting that peace can only be found if he is successful in a suit? What if he loses on the appeal which is equally a probability? Is he saying that no execution of the decree will be carried out otherwise there will be no peace! In any case the trees have already been felled down and the boundary corrected. The world has not come to an end and I have not been told that there is no peace in the neighbourhood. And I dare the applicant to disrupt the peace as he has threatened. The authority of this court or any other court in the administration of justice while ensuring the realization of one's fruits of his Judgment shall be guarded without any regard to threats such as the applicant has issued herein. When the applicant came to court for certain declarations and orders, he expected that had he been successful, then the court would ensure that a decree in his favour would be executed. He should also have expected that any decree in favour of his adversary would equally be executed. I have said enough on the empty threats against execution of court decrees.
8. A stay of execution in the case of a non-monetary decree is usually meant to serve the purpose of pursuing the subject matter so that in case the appellant does succeed in the appellate court, the whole process is not turned into an academic exercise. This being a non-monetary decree the court needs to be more cautious and interrogate the consequences of failure to pursue the subject matter. In our case, the respondent would be at liberty to dispose of the 22 Acres being occupied by members of the



applicant's family, demolish the buildings thereon and should the applicant finally succeed on appeal, the parcel of land may have changed hands severally and it would complicate the process of undoing the changes. It is with this in mind that I make the following orders:-

1. The process of transmission in Kisii Succession Cause No 439 of 2009 should proceed to its finality.
2. After transmission title(s) to the 22 Acres being occupied by the applicant and his family shall not be transferred to any other person and any disposition of the same is (or are) hereby prohibited by this court. The same shall have (a) caution(s) registered against it (them) to remain in force until the final determination of the intended appeal.
3. No further development shall be made on the 22 Acres mentioned above.
4. The status quo of the 22 Acres which have already been fenced off from the area occupied by the applicant and his family, shall remain as it persisted on June 12, 2022.
5. The intended appeal must be filed within the next Ninety (90) Days from the date hereof failure to which the orders herein shall automatically lapse.
6. The costs of this application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 28<sup>TH</sup> DAY OF JULY 2022.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant – Sibota

Nyamari holding brief for Mr. Soire for the Respondent

N/A for the Applicant

