



**Karanja & another v Waweru & 3 others (Miscellaneous Civil Application  
36 of 2019) [2025] KEELC 3254 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3254 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
MISCELLANEOUS CIVIL APPLICATION 36 OF 2019**

**JM ONYANGO, J**

**APRIL 3, 2025**

**BETWEEN**

**FRIDAH MUTHONI KARANJA ..... 1<sup>ST</sup> PLAINTIFF**

**AYUB KARANJA MWAHUKI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ALICE NJERI WAWERU ..... 1<sup>ST</sup> DEFENDANT**

**IBRAHIM MWITHUKIA WAWERU ..... 2<sup>ND</sup> DEFENDANT**

**MOSES KAMAU WAWERU ..... 3<sup>RD</sup> DEFENDANT**

**MARIAM WANGU WAWERU ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Judgment in this suit was delivered on 2/2/2022, where the court (Gacheru J) inter alia decreed that a portion measuring approximately 0.5 acres be excised from Land Title No. Muguga/Jet Scheme/587 (the suit land) and be registered in the names of the Plaintiffs (Applicants). Subsequently, the Applicants brought a post-judgment application dated 24/6/2022, seeking the following verbatim orders:
  1. That all the defendants/respondents herein be compelled to deposit with the Deputy Registrar of the Environment and Land Court of Kenya at Thika the original title in respect to land title No. Muguga/Jet Scheme/587, their copies of PIN Certificates, national identity cards and three (3) coloured passport photos (for each person) in execution of this honourable court's decree.
  2. That in the event the defendants/respondents fails to comply with Order 1 above, the Land Registrar, Kiambu be ordered to dispense with production of the original title in respect of land title No. Muguga /Jet Scheme/587, their copies of PIN certificate, national identity



cards and coloured passport photos of the defendant/ respondents during registration of the transfer.

3. That all the defendants /respondents herein be compelled to execute the mutation forms, sub division forms and all the requisite transfer forms in respect to land title No. Muguga/Jet Scheme/587 in execution of this honourable court's decree.
  4. That in the event that the defendants/ respondents herein refuse to comply with the above order, the Deputy Registrar of the Environment and Land Court of Kenya at Thika does execute the mutation forms, sub division forms and all the requisite transfer forms in respect to land title No. Muguga/Jet Scheme /587 in execution of this honourable court's decree.
  5. That the honourable court be pleased to issue an order directing the Officer Commanding (OCS) Kikuyu Police Station to provide security to the Land Surveyor, the Decree Holders/ Applicants, together with their agents and employees during the excising of the portion measuring 0.5 acres in respect to Land title No. Muguga/Jet Scheme /587.
  6. That costs be in the cause.
2. On 5/6/2024, the court [Eboso J) delivered a ruling allowing the Applicants' application in terms of prayers 1,2,3,4 and 5. The Applicants have once again filed a post-judgment application dated 3/9/2024, seeking the following orders:
- i. Spent
  - ii. That the Kiambu County Land Registrar be ordered to cancel and revoke title numbers: Muguga/ Jet Scheme 6470; Muguga/Jet Scheme 7585; Muguga/Jet Scheme 7586; Muguga/ Jet Scheme 7587; Muguga/Jet Scheme 7588; Muguga/Jet Scheme 7589; Muguga/Jet Scheme 7590; Muguga/Jet Scheme 7591; Muguga/Jet Scheme 7592; Muguga/Jet Scheme 7593; Muguga/Jet Scheme 7594; Muguga/Jet Scheme 7595; Muguga/Jet Scheme 7596; Muguga/ Jet Scheme 7597; Muguga/Jet Scheme 7598; Muguga/Jet Scheme 7599; Muguga/Jet Scheme 6486; and Muguga/Jet Scheme 6487.
  - iii. That the Kiambu County Land Registrar be ordered to reinstate title number Muguga/Jet Scheme/587.
  - iv. That the Kiambu County Land Surveyor be ordered to cancel any subdivisions and mutation forms in respect of title number Muguga/Jet Scheme/587.
  - v. That pursuant to the decree and further orders of this court, a portion measuring 0.5 acres be excised from the restored title number Muguga/Jet Scheme/587.
  - vi. That the Respondents herein be compelled to bear the costs of this application.
3. The said application is the subject of this ruling. The application is predicated on the joint Supporting and Further affidavits sworn by the 1<sup>st</sup> and 2<sup>nd</sup> Applicants on 3/9/2024 and on 6/11/2024, respectively. The application is opposed through the Replying Affidavit of Moses Kamau, the 3<sup>rd</sup> Defendant, sworn on 28<sup>th</sup> October 2024. The other defendants did not file a replying affidavit in response to the application. They elected to only file grounds of opposition dated 27/4/2023.
4. The case of the Applicants is that they were in the process of excising 0.5 acres from the suit land and registering the same in their names in execution of the court's decree when they discovered that the Respondents had illegally subdivided the suit land into 18 different portions as follows: Muguga/ Jet Scheme 6470; Muguga/Jet Scheme 7585; Muguga/Jet Scheme 7586; Muguga/Jet Scheme 7587;



Muguga/Jet Scheme 7588; Muguga/Jet Scheme 7589; Muguga/Jet Scheme 7590; Muguga/Jet Scheme 7591; Muguga/Jet Scheme 7592; Muguga/Jet Scheme 7593; Muguga/Jet Scheme 7594; Muguga/Jet Scheme 7595; Muguga/Jet Scheme 7596; Muguga/Jet Scheme 7597; Muguga/Jet Scheme 7598; Muguga/Jet Scheme 7599; Muguga/Jet Scheme 6486; and Muguga/Jet Scheme 6487.

5. The Applicants contend the said titles which were issued illegally need to be revoked and cancelled by an order of this court and revert to the original title number Maguga/Jet Scheme/587. They add that they continue to suffer an injustice due to the actions of the Respondents who are hell-bent on preventing them from enjoying the fruits of their judgment.
6. The Respondents oppose the application through the Replying Affidavit sworn by Moses Kamau Waweru (the 3<sup>rd</sup> Respondent) on 28<sup>th</sup> October 2024. He contends that the Applicants were aware of the existence of the titles to the subdivided portions prior to the delivery of the judgment. He further contends that the said titles were issued pursuant to a Certificate of Confirmation of Grant issued in Limuru SPMCC Succession Cause 115 of 2016 which matter the Applicants were aware of but did not object to. He adds that the Respondents filed an appeal against the judgment of 2/2/2022 hence, this court should not entertain the discussion of issues which are before the court of appeal for determination.
7. It is the 3<sup>rd</sup> Respondent's contention that the Applicants neither seek a review of the judgment nor an appeal against it. The 3<sup>rd</sup> Respondent faults the Applicants for seeking to reverse the orders of this court without using the proper procedural steps in doing so. He adds that an order for cancellation of titles issued to the Respondents on the subdivisions of the suit land should not be sought through an application but through a fresh suit.
8. The 3<sup>rd</sup> Respondent deposes that this application seeks cancellation of all the respective sub-divided titles issued on the suit land, yet the decree of the court only relates to a minor portion of the suit land. He states that this court ought to allow the status quo to be maintained in a bid to give parties a chance at a fair hearing of the pending appeal. He adds that the Respondents will be prejudiced if the application is allowed, given that the appeal is pending hearing and determination.
9. By the time of writing this ruling, none of the parties had filed their submissions.
10. The court has considered the application and the affidavits filed by both parties. The only issue for determination in this ruling is whether the Applicants have made out a case for the post-judgment orders that they seek through the application dated 3/9/2024.
11. It is common ground that judgment herein was delivered on 2<sup>nd</sup> February 2022 in which the court directed that a portion measuring approximately 0.5 of an acre be excised from title number Muguga/ jet Scheme /587 and registered in the names of the Plaintiffs herein. The Plaintiffs subsequently sought to enforce the said judgment in vain as they discovered that the plaintiffs had sub-divided the suit property into 18 portions and new titles had been issued. This was done pursuant to a Certificate of confirmation of Grant issued in Limuru SPMC Succession Cause No. 115 of 2016 (the Estate of Mohammed Waweru Mwithuka).
12. A perusal of the Replying Affidavit sworn by Moses Kamau Waweru on 26.8.2019 confirms that this issue of the sub-division of the suit property was brought to the Plaintiffs' attention way back in 2019 but they took no steps to amend their pleadings. As matters stand, the suit property in respect of which judgment was entered is no longer in existence as it has been sub-divided and titles issued to persons who are not parties to this case.



13. As correctly argued by the Respondents, the orders sought cannot be granted in this suit as the cancellation of titles is a substantive prayer which can only be issued after hearing the parties who will be affected by the said cancellation.
14. In the circumstances, it is not tenable to cancel the titles of the new owners without giving them an opportunity to be heard as this would be in contravention of Article 50 of *the Constitution*.
15. The defendants have also pointed out that they have filed an appeal against the judgment of this court and they would be prejudiced if the orders sought are granted. Although this constitutes a good reason for disallowing the application, I am aware that there is no order for stay of proceedings.
16. In view of the foregoing, the application is not merited and I dismiss it with costs to the Defendants.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF APRIL 2025.**

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**J. M ONYANGO**

**JUDGE**

In the presence of:

Miss Wandia for Mr Kagunda for the Respondent

Mr Kabura for the Appellant

Court Assistant: Hinga

