



Njoro Golf Club Squatters Self Help Group through its registered trustees and nine others v Uhuru Welfare Association through its purported registered trustees and five others & another (Environment & Land Case 437 of 2013) [2022] KEELC 4937 (KLR) (27 September 2022) (Ruling)

Neutral citation: [2022] KEELC 4937 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 437 OF 2013**

**JM MUTUNGI, J
SEPTEMBER 27, 2022**

BETWEEN

NJORO GOLF CLUB SQUATTERS SELF HELP GROUP THROUGH ITS REGISTERED TRUSTEES AND NINE OTHERS PLAINTIFF

AND

**UHURU WELFARE ASSOCIATION THROUGH ITS PURPORTED REGISTERED TRUSTEES AND FIVE OTHERS 1ST DEFENDANT
COUNTY COUNCIL OF NAKURU 2ND DEFENDANT**

RULING

1. I have before me what I would describe as a very convoluted matter. The litigation involves two welfare associations who each claim to be entitled to some parcel of land at the outskirts of Njoro Townships in Nakuru County. The Nakuru County Government is caught in the cross-hairs as one group alleges they are the ones who allocated the land to them.
2. The plaintiffs, Njoro Golf Squatters Self Help Group commenced the suit by way of plaint before the subordinate court as Nakuru CMCC NO 773 of 2009 against Uhuru Welfare Association Registered Trustees and County Council of Nakuru as defendants. The plaintiffs sought injunctive orders against the defendants restraining them from in anyway interfering with the plaintiff's parcel of land Njoro Golf Club 2020/2023/519 which the plaintiffs claimed to have acquired legal ownership by virtue of adverse possession. Both defendants filed their respective defences to the plaintiffs' claim. Uhuru Welfare Association, the 1st defendant filed a defence and counterclaim. In addition to the 1st defendant asserting that the subordinate court lacked jurisdiction to entertain a claim relating to prescriptive rights, the 1st defendant by way of counter claim averred that the 1st defendant was original owner to the parcel of land by reason of the same having been set aside by the Director of Physical Planning *vide*



PDP No R23/2001/3 for their benefit. They averred that the High Court in Judicial Review No 201 of 2008 had annulled the letters of allotment made in favour of the plaintiffs, by the Nakuru County Council. The 1st defendant in the counterclaim sought the eviction of the plaintiffs from the land comprised in a PDP No R23/2001/3.

3. The record shows there was a multiplicity of applications before the subordinate court. One such application was a chamber summons application that sought to have the plaintiffs' plaint struck out on the grounds that the plaintiff was not a legal entity capable of instituting the suit and further on the basis that the court lacked jurisdiction to entertain a claim for adverse possession. The trial magistrate on March 19, 2010 allowed the application and ordered that the plaintiff's suit be struck out with costs to the defendants.
4. The 1st defendant/counter claimer subsequently fixed the counterclaim for hearing on December 16, 2011 when the same was heard in the absence of the plaintiffs and the 2nd defendant. Judgment was delivered in favor of the 1st defendant/counter claimer on March 2, 2012 whereby an order for the eviction of the plaintiffs was given as prayed in the counterclaim.
5. The record show that the firm of J Ndungu Njuguna Co Advocates acting for co-defendants/applicants filed an application dated December 6, 2012 seeking inter alia stay of execution of the judgment and the setting aside the interlocutory judgment and the final judgment delivered on March 2, 2012

“By consent the judgment against the co-defendants be and is hereby set aside. The co-defendants to file defence within 14 days and will pay thrown away costs of Kshs 20,000/=.

6. On August 6, 2012 Wangai Muchugia and 77 others named as co-defendants filed the statement of defence to the 1st defendant's counterclaim and also filed their own counterclaim against the 1st defendant's counterclaim. The 1st defendant on September 5, 2012 filed a reply to the counterclaim. The matter before the subordinate court did not advance much after that as upon an application by the 1st defendant the file was transferred from the lower court to the High Court vide HC Misc Application No 180 of 2013 on April 4, 2013. The file was renumbered as Nakuru ELC No 437 of 2013.
7. The parties as per the record filed other various applications which appear not to have been disposed of. The 1st defendant filed a notice of motion application dated September 11, 2013 seeking inter alia injunctive orders against the 2nd defendant restraining the council from in any manner dealing with the land comprised in PDP No R23/2001/3 pending the determination of the suit. Although the parties filed a consent compromising the application dated December 20, 2013, the consent does not appear to have been endorsed by the court. The co-defendants *vide* a notice of motion dated January 16, 2014 applied to be granted leave to join the Director General National Land Commission and the Attorney General as parties to the suit and for consequent leave to parties to amend their pleadings. There is no indication from the record that this application was ever dealt with. However, the record shows that following service upon the parties of a notice to show cause why the suit should not be dismissed under order 17 rule 2 of the [Civil Procedure Rules](#), Munyao, J on January 30, 2018 made an order dismissing the suit and counterclaim in the following terms: -

“No cause has been shown why this case should not be dismissed and neither the plaintiffs nor the defendant with a counterclaim has moved the court since 2015. They have clearly lost interest.



I hereby dismiss this suit for want of prosecution and similarly dismiss the counterclaim on record for want of prosecution. Costs to the 2nd defendant i.e County Government of Nakuru.”

8. I have set out the foregoing background to contextualize the 1st defendant’s twin applications dated January 20, 2021 filed in court on January 22, 2021. In one of the applications, the 1st defendant/applicant prays for an order:-

“That this Hon Court be pleased to set aside its orders of January 30, 2018 dismissing the suit herein for want of prosecution and reinstate the same and allow the same to be heard and determined on merit to avoid a travesty of justice.”

9. The affidavit in support of this application was sworn by John Maina Gichuru. The record does not show that any directions were given in regard to the disposal of this particular application. The other application by the 1st defendant/applicant inter alia prayed for the following orders:-

3. That this honorable Court be pleased to issue fresh eviction order against individuals purporting to be trustees of the plaintiffs and directors of their co-defendants together with all individuals joined herein (defendants/respondents in the counterclaim) from the parcel of land comprised in PDPR23/2001/3.
4. That the decree for the eviction of the defendants and their co-defendants/Respondents in the counterclaim be effected by JK Wanderi Auctioneers with the assistance of Sub County Police Commander, Njoro who shall inform the Regional Police commander, Rift Valley Region at least 7 days before eviction is effected.
5. That in the alternative, this Honorable court be pleased to issue a notice to show cause why an eviction order should not issue against individuals purporting to be trustees of the plaintiffs and directors of their Co- defendants together with all individuals joined herein (defendants/respondents in the counterclaim) from the parcel of land comprised in PDP R23/2001/3.

10. This application was equally supported by an affidavit sworn by John Maina Gichuru. Apparently, this latter application is the one the court gave directions in regard to on January 25, 2021 and it is the application that the respondents responded to vide the replying affidavit dated July 12, 2021 sworn in opposition to the application by one Joseph Chege Wangai. The respondents also filed a preliminary objection dated 12th July 2021 premised on the grounds that the application was res judicata and that the application was incompetent as it offended the provisions of order 22 rule 18 of the [Civil Procedure Rules 2010](#). The applicants responded to preliminary objection by way of replying affidavit sworn by the said John Maina Gichuru on October 18, 2021 who additionally swore a supplementary affidavit in response to the respondent’s replying affidavit on the same date.

11. The parties canvassed the application and the preliminary objection by way of written submissions. I have reviewed the pleadings, the record and the submissions by the parties. The application by the 1st defendant/applicant and the response thereto presupposes that there is in force a valid judgment and/or decree that affects all the parties herein. The 1st defendant/applicant predicated their application on the exercise of judgment and decree and order of eviction issued against the plaintiffs by the subordinate court. The plaintiff in the suit before the Chief Magistrates Court was “Njoro Golf Squatters Self Help Group through its registered Trustees, Joseph Chege Wangai & 8 others.” The trial magistrate in striking out the plaintiffs’ plaint on March 19, 2010 held that the plaintiff had not demonstrated they had a juridical character and that the court could not entertain a claim of adverse possession as only



the High Court had jurisdiction to sustain a claim which in any event ought to have been brought by way of an originating summons.

12. Although the record shows the 1st defendant/counter claimer was granted leave to amend the counterclaim and join various individuals as co-defendants alongside with groups described as Faith Holy Orphanage through its Registered Trustees; Faith Holy Secondary School through its Board of Directors and Njoro Jua Kali through its Registered Trustees, it is not apparent how these co-defendants were served with the amended counterclaim.
13. Nonetheless, the firm of J Ndungu Njuguna & Company Advocates as indicated earlier in this ruling on December 6, 2012 applied on behalf of the co-defendants to set aside the judgment and the judgment entered on March 2, 2012 was set aside and consequently the judgment against which the eviction order was issued having been set aside the order of eviction went with it. After the judgment was set aside the position that remained was that the counterclaim had not been determined on merit as the co-defendants were permitted and they did file their defence to the counterclaim together with their own counterclaim against the 1st defendant. This remained the position until January 30, 2018 when Munyao, J ordered the suit and the counter claim dismissed for want of prosecution.
14. The order dismissing the suit and the counterclaim has not been set aside. The application by way of chamber summons dated January 20, 2021 seeking a reissue of fresh eviction order on the basis of a not existent judgement and decree is incompetent and an abuse of the court process. The same is hereby ordered struck out with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 27TH DAY
SEPTEMBER OF 2022.**

J M MUTUNGI

JUDGE

