



**Kimathi & 7 others v M’Muthaura (Environment & Land Case  
131 of 2014) [2022] KEELC 13808 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13808 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 131 OF 2014  
CK YANO, J  
OCTOBER 26, 2022**

**BETWEEN**

**BERTHA MWARI KIMATHI ..... 1<sup>ST</sup> PLAINTIFF  
ELIZABETH NCHORO M’RUKARIA ..... 2<sup>ND</sup> PLAINTIFF  
JULIA MAREGI MUKETHA ..... 3<sup>RD</sup> PLAINTIFF  
ALICE THIORI M’MARETE ..... 4<sup>TH</sup> PLAINTIFF  
JOSEPH KITHURE ..... 5<sup>TH</sup> PLAINTIFF  
MARGARET KARWITHA MUTHAURA ..... 6<sup>TH</sup> PLAINTIFF  
MARTIN KINYUA ..... 7<sup>TH</sup> PLAINTIFF  
HELLEN MUGURE ..... 8<sup>TH</sup> PLAINTIFF**

**AND**

**SILAS MAINGI M’MUTHAURA ..... DEFENDANT**

**RULING**

1. On September 30, 2014, the plaintiff and the defendant entered into a consent compromising the suit and judgment was entered in the following terms:

“That the plaintiffs get the following acreage from the suit land-;

1. Bertha Mwari Kimathi 1 acre
2. Elizabeth Nchoro M’rukaria 1 acre
3. Julia Maregi Muketha 1 acre



4. Alice Thiori M'Marete 1 acre
  5. Joseph Kithure 2 acres
  6. Margaret Karwitha Muthaura 1 acre
  7. Martin Kinyua 2 acres
  8. Hellen Mugure 1 acre
  9. 1 acre should be shared equally by Bertha Mwari Kimathi, Elizabeth Nchoro M'rukaria, Julia Maregi Muketha, Alice Thiori M'Marete, Margaret Karwitha Muthaura and Hellen Mugure
  10. The rest of the suit land should remain the property of Silas Maingi M'Muthaura, the defendant”.
2. Pursuant to the said consent, the court granted the following orders-;
- “ 1. The consent terms are adopted as orders of this court and this adoption fully settles the suit and the parties may not bring it back to court.
  2. Parties will bear their own costs.
  3. The District Land Adjudication and Settlement Officer, Imenti Central and Buuri is directed to implement the orders of court issued today and to have respective parcels recorded in the names of the plaintiffs in obeisance to this judgment”
3. It appears that the defendant was unable to comply with his obligations under the said consent as it turned out that the defendant refused, declined and or refused to sign the necessary instruments in facilitation of subdivision and transfer of parcel No. Kiirua/Nkando/537 for purposes of sub division, transfer and or related purposes to enable the land to be apportioned to the plaintiff's in obeyance and compliance of the consent judgment. Consequently, the plaintiffs filed an application dated December 13, 2016 in which they prayed for orders that the court dispenses with the original title deed held by the defendant and empower the executive Officer Meru Law court to execute all necessary instruments in facilitation of subdivision and transfer of parcels to be excised from Kiirua/Nkando/537 in the name of each of the plaintiffs as per the judgment dated September 30, 2014 and direct the Land Registrar to implement the court's judgment. The plaintiffs also allege that the defendant had sold part of the suit land to other people not parties to this suit.
4. The court heard the said application and by a ruling delivered on December 21, 2016 found that the application had merit and granted orders in terms of prayer 2 thereof.
5. Due to their inability to execute the decree or orders of this court, the plaintiffs again filed a notice of motion dated January 29, 2021 seeking for orders, *inter alia*, that the court grants leave to the firm of Kaimba Peter & co. advocates to come on record for the plaintiffs, that it makes an order of inhibition inhibiting all dealings in respect of land parcel No. Kiirua/Nkando/537, leave to be granted to the plaintiffs to cite the defendant for contempt and an order for committal against him and an order of review of the judgment delivered on September 30, 2014. Upon considering the said application the court in a ruling dated October 6, 2021 declined to allow the orders sought, save for the one for leave for the firm of Kaimba Peter and co. advocates to come on record for the plaintiffs/applicants.
6. Now the plaintiffs have filed an application by way of notice of motion dated August 5, 2022 seeking the following orders-;



1. That this application be certified urgent and be heard ex-parte at first instance on priority basis and thereafter as court shall direct.
2. That an order directing the director of survey to rectify and or reverse the illegal and unprocedural alterations done to the cadastral map for Kiirua Nkando Registration Section, which alterations involved extraction of a greater portion of land No. Kiirua/Nkando/537 and utilization of the extracted land to create parcels No. 4829, 4830, 4831, 4832, 4833, 4834 and 4835.
3. That an order issue directing the director of Surveys to implement the orders relating to them as contained in the consent judgment dated September 30, 2014.
4. That an Order issue directing the Meru land Registrar to cancel any title deeds created out of subdivision of land parcel Title No. Kiirua/Nkando/537 and or extraction of any parcel of land therefrom.
5. That an order of inhibition issue restraining the Meru Land Registrar from registering or processing any transaction and/or dealing regarding title No. Kiirua/nkando/537, except as in compliance with the consent judgment dated September 30, 2014.
6. That there be no order as to cost”
7. The application is supported by an affidavit by Bertha Mwari Kimathi sworn on August 25, 2022. She depones that upon issuance of the court’s ruling on October 6, 2021, she submitted all relevant documentation to the Meru Land registry for processing of titles as stipulated in the consent judgment dated September 30, 2014 but the Meru sub county office of the department of survey rejected the applicant’s application on account of alterations done to the cadastral map for the suit property title No. Kiirua/nkando/537 which reduced the size of the suit land below that required to implement the consent judgment dated September 30, 2014. That the net effect of the alterations to the said cadastral map is the extraction of a greater portion of the suit land and utilization of the extracted land to create parcels Nos. 4829, 4830, 4831, 4832, 4833, 4834, and 4835. A copy of the cadastral survey map Marked “BMK- 1” is annexed.
8. The deponent averred that the applicants immediately instructed their advocates to obtain a copy of the green Card for the suit property, (which has also been annexed) and that the same revealed the land registry file for title No. Kiirua/Nkando/537 has never been altered since November 3, 2014 when a title deed to the said land was issued to the respondent, and that the parcels no. 4829, 4830, 4831, 4832, 4833, 4834 and 4835 do not have any land registry files corresponding to them in any form contrary to section 16(2) and 22(2) of the *Land Registration Act*. That the said alterations to the cadastral map for Kiirua Nkando registration section are not supported by relevant documentation or lawful process hence the same is unprocedural and illegal and intended to provide illicit benefit to the respondent. That due to the unprocedural nature of the said alterations, the Meru sub county office of the department of survey advised the applicants to obtain a court order to reverse the illegal alterations done to the cadastral map for the suit property to enable the implementation of the consent judgment dated September 30, 2014, hence the application herein.
9. Despite service of the application upon the respondent, no response has been made.
10. The application was brought under section 1A, 1B and 3A of the *civil Procedure Act*, Order 51 rule 1 of the *civil Procedure rules* and section 68 of the *Land Registration Act* No. 3 of 2012. When the application came up for hearing on September 28, 2022, Mr. Kaimba learned counsel for the applicants urged the court to allow the application in terms of prayers 2, 3, 4 and 5 since the same was not opposed.



11. I have considered the application together with the affidavit in support thereof. I am not convinced that the court has jurisdiction to do what has been called upon to do in the present application. Firstly, the application bears some similarity with the application dated January 29, 2021, particularly with regard to making orders which will amount to a review of the consent judgment dated September 30, 2014. The application also seeks orders of inhibition which was also sought in the application dated January 29, 2021 and which the court in its ruling delivered on October 6, 2021 declined to grant.
12. Secondly, the consent judgment of September 30, 2014 was between the plaintiffs and the defendant. As I have already mentioned the plaintiffs allege that they have been unable to implement the said consent judgment due to some alterations done to the cadastral map for the suit property. The consent judgment related to parcel No. Kiirua/nkando/537. The application before me refers to other titles No. 4829, 4830, 4831, 4832, 4833, 4834 and 4835 which did not form part of the said consent judgment although they are alleged to have been created from land parcel No. Kiirua/nkando/537. Granting the orders sought in the application would be tantamount to review of the consent judgment herein. There is a laid down procedure for applying for a review of a consent in the event the parties or any of them desire to do so.
13. What the court has been called upon to do is to make orders for the cancellation of titles which did not form part of the consent judgment entered into between the plaintiff's and the defendant. I believe that the court cannot alter and endorse any consent by the parties, other than to adopt it as dictated by the parties. The effect of the orders sought by the applicants herein if granted would result in the cancellation of titles that were not part of the consent herein, and which titles may be in the names of people who were not parties to the consent and are not parties in this suit. Due process must be followed before a court can issue orders cancelling titles that were not part of the subject of the suit.
14. In the application herein, the applicants are also seeking orders directed at some public officers, namely the director of surveys and the Land Registrar who are not parties to the application despite serious allegations having been made against them. I note that the court touched on this issue in the ruling dated October 6, 2021 and therefore I need not say more.
15. I have said enough to show that the plaintiff's application dated August 5, 2022 is not for granting. The application is accordingly dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED AT MERU THIS 26<sup>TH</sup> DAY OF OCTOBER, 2022**

**IN PRESENCE OF:**

CA. Mwenda

No appearance for plaintiff

No appearance for defendant

**C.K YANO**

**ELC JUDGE**

