



**Koibelei v Chemor (Environment & Land Case 499 of 2012)
[2022] KEELC 13540 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13540 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 499 OF 2012
EO OBAGA, J
OCTOBER 13, 2022**

BETWEEN

CHEMJOR CHESIGARY KOIBELEI PLAINTIFF

AND

JOSEPH KIPKOECH CHEMOR DEFENDANT

RULING

1. The applicants filed a notice of motion dated 5th May, 2022 in which they sought the following orders: -
 1. Spent
 2. That the defendant/judgment debtor be directed and ordered to execute the transfer documents within seven (7) days.
 3. That the Uasin Gishu Land Registrar do issue a title deed with respect to Land parcel Moiben/ moiben Block9 (BARSOMBE) 31 in the name of Chemor Chesigary Koibelel(Deceased).
 4. That in the alternative to (3) above, the Deputy Registrar Environment & Land Court to sign the transfer documents of Joseph Kipkoech Chemor in respect to land parcel No Moiben/ moiben Block9 (BARSOMBE) 319 which he has refused, failed or otherwise been unable to sign the said documents since 25th September, 2014.
 5. That costs to be provided for.

Background:

6. The applicants are personal representatives of the estate of the late Chemor Chesigary Koibelel (Deceased). The applicants and the Respondent are all brothers who are sons of the deceased. The Respondent is the registered owner of Moiben/Moiben Block 9 (Barsombe) 319 (suit property).



7. The applicants filed this suit on 19th March 2009 against the respondent in which they sought orders of injunction against the respondent and for cancellation of title in respect of the suit property. They also sought a declaration that the suit property belonged to the estate of the deceased.
8. During the hearing of the case, the applicants testified that they contributed Kshs 1000/= each which enabled the deceased to purchase the suit property. They therefore contended that they were entitled to 2.5 acres each from the suit property and that the balance of 8 acres was to go to the respondent's mother. They had contended that the respondent obtained registration in his name fraudulently.
9. In a judgement delivered on 25th September, 2014, the Court found in favour of the applicant and accordingly entered judgement in their favour. The respondent was aggrieved with the judgment and he preferred an appeal to the Court of Appeal. In a judgement delivered on 28th June 2019, the respondent succeeded with the result that the judgement of Munyao J was set aside and in place thereof, an order was made dismissing the applicants' suit.

Applicants' contention__:

10. The applicants contend that the suit before the Environment and Land Court was fully heard and a judgment given in their favour. Proceedings in respect of the estate of the deceased were carried out *vide* Kitale High Court Succession Cause No 64 of 2010 wherein the suit was listed as one of the assets of the deceased.
11. The applicants further contend that they extracted a decree arising out of this suit but that the respondent has declined to execute documents to transfer the suit property to the estate of the deceased for distribution as per the confirmed grant from succession cause No 64 of 2010.

Respondents contention:

12. The respondent contends that this court is functus officio as this matter has been decided by the Court of Appeal which overturned the judgment of the Environment and Land Court and that in any case, the judgment of the Court of Appeal supersedes the succession cause.
13. The respondent further contends that he cannot be forced to execute orders arising from a decree which has already been reversed and the title remains in his name.

Analysis and determination:

14. The applicants were granted leave to file a further affidavit together with written submissions within 7 days from 27th June 2022. When this matter came up for mention on 19th September, 2022, the applicants had neither filed a further affidavit nor submissions. Their counsel was not in court and even the applicants were not in court.
15. The respondents filed their submissions on 19th September, 2022. I have carefully considered the applicants' application as well as the opposition to the same by the respondent. I have also considered the submissions by the respondent. The only issue for determination in this matter is whether the respondent or the Deputy Registrar of this court should be ordered to execute transfer forms as requested.
16. I must say at the outset that this is one case which demonstrates the importance of a counsel who comes into a matter long after judgment should appraise himself/herself with the court file before taking any action.



17. The Counsel for the applicants filed notice of change of Advocates on 5th March, 2022 and filed the current application on the same day. Part of the averments in the supporting affidavit to the application is that there is no stay or appeal against the judgment delivered on 25th September, 2014. These averments are not correct as there is already a concluded appeal whose judgment was delivered on 28th June, 2019 and the judgment of the Court of Appeal is in this file.
18. Ownership disputes are handled by the Environment and Land Court. They are never decided through succession proceedings where ownership is in contention as in this case. I appreciate the fact that as the time the applicants obtained a confirmed grant at the High Court at Kitale on 29th October, 2015, the judgment of the Court of Appeal had not been delivered and the judgement of the Environment and Land Court still stood. However, it would have been better for the applicants' advocate to peruse the court file and ascertain the true position.
19. In view of the judgment of the Court of Appeal, there is no order which can be given in favour of the applicants.

Disposition:

20. From the above analysis, it is clear that the applicants' application is devoid of merit. The same is dismissed with costs to the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 13TH DAY OF OCTOBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Cheptarus for Defendant/Respondent.

Court Assistant -Albert

E. O. OBAGA

JUDGE

13TH OCTOBER, 2022

