



**Kirori (Suing as the Administrator of the estate of Kirori Ngumba (deceased)  
v Kirori & another; Kanyagia & 2 others (Interested Parties) (Environment &  
Land Case 237 of 2017) [2022] KEELC 13491 (KLR) (17 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13491 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 237 OF 2017  
BM EBOSO, J  
OCTOBER 17, 2022**

**BETWEEN**

**JOSEPH NDUNGU KIRORI (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF KIRORI NGUMBA (DECEASED) ..... PLAINTIFF**

**AND**

**FRANCIS NDUNGU KIRORI ..... 1<sup>ST</sup> DEFENDANT**

**EVERLYN MURUGI RUFUS ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**PATRICK MUNGAI KANYAGIA ..... INTERESTED PARTY**

**ROSEMARY WAMBUI KANYAGIA ..... INTERESTED PARTY**

**SUMMERFIELDS HEIGHTS LIMITED ..... INTERESTED PARTY**

**RULING**

1. On March 23, 2017, the firm of Nguni Mbugua & Co Advocates filed a document titled “consent Order”, dated February 6, 2017. The document read as follows:

“1. We the undersigned Beneficiaries/Administrators of the Estate of Kirori Ngumba (deceased) do hereby Consent that the immovable properties listed at paragraph 7 of the plaint be registered in the manner set out hereunder:

- (a) Land Reference Number 13537/750, 751, 752, 753, 754 and 755 to Stephen Kanyi Kirori absolutely.
- (b) Land Reference Number 13537/756 to Joseph Ndungu Kirori absolutely.



- (c) Land Reference Number 13537/757 to Stanslaus Ngumba Kirori absolutely.
- (d) Land Reference Number 13537/758 to Fredrick Ndungu Kirori absolutely.
- (e) Land Reference Number 13537/759 to Peter Kamau Kirori absolutely.

2. Upon filing of this order this suit be marked as “settled.”

Dated at Nairobi this February 6, 2017.

[Signed]

Ngure Mbugua & Co

Advocates for the Plaintiff”

2. The consent order was signed by M/s Ngure Mbugua & Co. Advocates. In addition, the consent was expressed as having been signed by the following five individuals: (i) Joseph Stanslaus Ngumba (ii) Stephen Kanyi Kirori (iii) Fredrick Ndungu Kirori (iv) Peter Kamau Kirori and (v) Joseph Ndungu Kirori.

3. On March 31, 2017, the Deputy Registrar of this court recorded the consent and marked this suit as settled in the following terms:

“In the ELC Registry, pursuant to the consent dated February 6, 2017, duly filed by the firm of Ngure Mbugua & Co Advocates for the Plaintiff:

It is hereby adopted and ordered as follows: That the immovable properties listed at paragraph 7 of the plaint be registered in the manner set out hereunder:

- (a) Land Reference Number 13537/750, 751, 752, 753, 754 and 755 to Stephen Kanyi Kirori absolutely.
- (b) Land Reference Number 13537/756 to Joseph Ndungu Kirori absolutely.
- (c) Land Reference Number 13537/757 to Stanslaus Ngumba Kirori absolutely.
- (d) Land Reference Number 13537/758 to Fredrick Ndungu Kirori absolutely.
- (e) Land Reference Number 13537/759 to Peter Kamau Kirori absolutely.

That upon the filing of this order this suit be marked as “settled”.

4. On September 28, 2017, Ms Oluoch [Counsel for the plaintiffs] and Ms Wamuyu [Counsel for the 2nd defendant] appeared before Gacheru J and invited the Judge to adopt the consent dated February 6, 2017. Consequently, on the same day, Gacheru J adopted the consent in the following terms:

“(i) The consent dated February 6, 2017 and filed in court on March 23, 2017 be and is hereby adopted as the order of this court.

(ii) The matter is consequently marked as settled.”



5. What followed on April 6, 2018 was an application by the plaintiff, dated April 5, 2018, in which the plaintiff sought the following orders:
  - 1) An order pursuant to Section 70(d) of the Land Registration Act 2012 cancellation [sic] of inhibition currently placed against the title numbers 1353/750, 751, 752, 753, 754 and 756.
  - 2) An order directing the Land Registrar Central Registry to register Stephen Kanyi Kirori pursuant to the order issued before this court on 28th September 2017 as absolute proprietor of the said titles.
  - 3) The costs of this application be provided for.
6. On May 17, 2019, Gacheru J rendered a ruling through which she granted to the plaintiff prayers 1 and 2 of the application dated April 5, 2018.
7. On January 1, 2020, the plaintiff brought an application dated January 29, 2020 seeking a review of the orders made in relation to the preceding application dated April 5, 2018 in the following terms:
  - 1) That the application dated April 5, 2018 be rectified to read Title Number 13537/750, 751, 752, 753, 754 and 755.
  - 2) That the costs of this application be provided for.
8. On July 29, 2020, Gacheru J allowed the above application dated January 29, 2020 in the following terms:
  - “(i) The Notice of Motion dated January 29, 2020 is not opposed.
  - (ii) I have seen the consent order and it reads LR No 13537/750 – 755 and not 1353/750 – 755
  - (iii) The application is allowed with costs being in the cause.”
9. The above series of orders triggered an application dated April 14, 2022 by Patrick Mungai Kanyagia, Rosemary Wambui Kanyagia and Summerfield Heights Limited, seeking to be joined as interested parties in this suit. Besides seeking to be joined as interested parties, they sought an order setting aside the consent order dated February 6, 2017 together with all the consequential orders flowing from the said order. The application was supported by an affidavit sworn on April 14, 2022 by Patrick Mungai Kanyagia. The applicants contended that the impugned consent order was irregularly procured by the plaintiff and his co-administrators of the estate of the late Kirori Ngumba through non-disclosure to the court the fact that prior to and since the filing of this suit, there were other registered owners who legitimately acquired titles to some of the parcels, namely LR Nos 13537/754, 13537/755, 13537/756 and 13537/757 for valuable consideration.
10. The plaintiff opposed the application through a replying affidavit sworn by Stanslaus Ngumba Kirori. He faulted the 1st defendant for not disclosing to the court that he had “further transferred the property to third party”. He added that it had come to their attention that the 2nd defendant had died in April 2022 hence the application by the intended interested parties “cannot stand before this court”.
11. The above application came up for hearing in the virtual court on October 13, 2022. Ms Oluoch appeared for the plaintiff. There was no representation on part of the two defendants. Ms Wanjiku



appeared for the intended interested parties. Ms Oluoch made the following oral submissions on behalf of the plaintiff.

“Both defendants are deceased. The 1st defendant died in 2015. The 2nd defendant died early this year. We are agreeable to the intended interested parties being joined as parties to this suit. Secondly, we are willing to have the consent dated February 6, 2017 set aside. It has emerged that by the time the consent was recorded, the intended interested parties were the registered proprietors, hence the consent order cannot be acted upon by the Land Registrar.”

12. Ms Wanjiku, counsel for the applicants/intended interested parties, had no objection to the above proposal by counsel for the plaintiff. The court was not able to issue orders relating to the application immediately because it needed time to read the file to understand the context in which the court was being invited to allow the application.
13. There are interesting facts about the impugned consent. The plaintiff's advocates executed the consent on one part. The five persons who signed the consent on the second part were not parties to this suit. There is no indication, even at this stage, that they are now parties to this suit. Secondly, the defendants in this suit were not signatories to the impugned consent. Thirdly, the impugned consent purported to vest parcels of land that were registered in the names of third parties who were not parties to this suit.
14. It is therefore no wonder that the plaintiff has, through counsel, readily conceded to the setting aside of the consent order dated February 6, 2017 together with all the subsequent consequential orders.
15. The result is that the application dated April 14, 2022 is allowed in the following terms:
  - (i) The consent order dated February 6, 2017, recorded by the Deputy Registrar on March 13, 2017 marking this suit as settled, and adopted by this court (Gacheru J) on September 28, 2017, together with all the subsequent consequential orders issued by this court in furtherance of the said consent order, are hereby set aside.
  - (ii) Patrick Mungai Kanyagia, Rosemary Wambui Kanyagia; and M/s Summerfield Heights Limited are admitted to this suit as 3rd, 4th, and 5th defendants respectively.
  - (iii) The plaintiff shall amend the plaint to incorporate the added parties.
  - (iv) The plaintiff has the statutory period of 12 months, from the date of the death of the 2nd defendant, to decide whether he wishes to pursue the claim against the 2nd defendant.
  - (v) The court notes that the claim against the 1st defendant who is reported to have died in 2015, prior to the filing of the impugned consent, abated in 2016.
  - (vi) This matter will be given a mention date at the time of rendering this ruling.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 17TH DAY OF OCTOBER 2022**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

**Ms Oluoch for the Plaintiff**

**Ms Wanjiku for the Intended Interested Parties**



**Court Assistant: Sydney**

