



**Yiare (Suing as the Administratrix of The Estate of Moses Leseni Ole Yiare - Deceased)  
& another v Kilgoris & 5 others (Environment and Land Miscellaneous Application  
E001 of 2022) [2022] KEELC 15014 (KLR) (23 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 15014 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2022  
EM WASHE, J  
NOVEMBER 23, 2022**

**BETWEEN**

**JULIET YIARE (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF  
MOSES LESENI OLE YIARE - DECEASED) ..... 1<sup>ST</sup> APPLICANT  
MOSES MOOKE LOONTASATI OLOLOUAYA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**LAND REGISTRAR, KILGORIS ..... 1<sup>ST</sup> RESPONDENT  
OLE NASITI ..... 2<sup>ND</sup> RESPONDENT  
LAND SURVEYOR, KILGORIS ..... 3<sup>RD</sup> RESPONDENT  
JOSEPH KIMORO ..... 4<sup>TH</sup> RESPONDENT  
LAND ADJUDICATION OFFICER, KILGORIS ..... 5<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Plaintiffs herein filed a miscellaneous application dated April 1, 2022 (hereinafter referred to as “the present application”) seeking for the following orders; -
  1. The instant application be certified urgent and same be heard on priority basis.
  2. The Honourable Court be pleased to order and /or direct the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein to proceed and visit ground position in respect of the original LR No Transmara/ Kimintet “D”/1077 and LR No Transmara/Kimintet “D”/1078 and in particular restore the original boundaries belonging to the applicants herein.



3. The Honourable Court be pleased to order and/or direct the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein to visit LR No Transmara/Kimintet “D”/1077 and LR No Transmara/Kimintet “D”/1078 and while thereon to demarcate, re-establish and/or otherwise restore the boundaries of the suit property.
  4. The Honourable Court be pleased to direct that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to file their Report(s) within a specified period in this Court and copies be availed to the applicants’ advocate.
  5. The Honourable Court be pleased to grant leave and/or liberty to the Applicants herein to engage and/or appoint a private surveyor to accompany the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents during the visitation exercise for purposes of ensuring objectivity and/or impartiality.
  6. The Honourable Court be pleased to order and/or direct the County Police Commander Narok, Sub-County Police Commander, Ward Commander, OCS Kilgoris Police Station and OCS Lolgorian Police Station to offer security to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents during the visitation unto LR No Transmara/Kimintet “D”/1077 and LR No Transmara/Kimintet “D”/1078.
  7. The Honourable Court to direct the Applicants herein to pay the charges and/or relevant costs towards the visitation exercise as well as the security charges if any.
  8. This Honourable Court be pleased to discharge, vary and/or set-aside orders issued by Honourable M I G Moranga (SPM) Kilgoris in ELC Case No E.078 OF 2021 directing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from interfering with the suit properties herein.
  9. An injunction be issued restraining the 4<sup>th</sup> and 5<sup>th</sup> Defendants from trespassing, cutting down trees and burning charcoal, occupying and/or taking possession of the properties known as LR No Transmara/Kimintet “D”/1077 and LR No Transmara/Kimintet “D”/1078.
  10. The costs of this Application be provided for.
2. The grounds in support of the above prayers were contained in the body of the present application and further collaborated by the supporting affidavit of the 1<sup>st</sup> Applicant sworn on the April 1, 2022.
  3. Upon perusing the certificate of urgency dated April 1, 2022 and the application thereto, the Court directed the same to be served on all the parties before further orders could be made.
  4. The present application was then served on all the Respondents and an affidavit of service to confirm the same was filed on the May 5, 2022.
  5. However, dispute proper service of all the Respondents, none of them entered appearance in person or through an advocate of this Court.
  6. Consequently thereafter, the present Application came up for hearing on the May 5, 2022 and the Court granted prayer 2,3,4,5 and 6 therein against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
  7. In compliance with the orders issued on the May 5, 2022, the 2<sup>nd</sup> Respondent filed his ground report on the May 18, 2022 while the 1<sup>st</sup> Respondent filed his ground report on the July 21, 2022.
  8. The two ground reports filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents confirmed that the identification of the boundaries relating to the properties known as LR No Transmara/Kimintet “D”/1077 and LR No Transmara/Kimintet “D”/1078 had been done and the relevant beacons and/or boundary marking properly placed on the ground.



9. However, in the 1<sup>st</sup> Respondent's Ground Report dated July 21, 2022, there was an observation that the properties known as LR No Transmara/Kimintet "D"/1077 and LR No Transmara/Kimintet "D"/1078 had strangers occupying some portions of land who were identified as (i) Joseph Kimiro (ii) Melita Ole Nasiti (iii) Nana Kimoro (iv) Julious Nasiri and (v) Joseph Nasiti.
10. The Court observes that Joseph Kimiro And Melita Ole Nasiti are the 4<sup>th</sup> and 5<sup>th</sup> Respondents in the present Application.
11. Nevertheless, the 1<sup>st</sup> Respondent's Ground Report further observes that the 4<sup>th</sup> and 5<sup>th</sup> Respondents herein conceded that they were squatters on the two properties known as LR No Transmara/Kimintet "D"/1077 and Transmara/Kimintet "D"/1078 and gave a commitment to yield vacate possession on their own motion in compliance with the advice of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.
12. Considering the prayers sought in the present application, the Orders issued on the May 5, 2022 and the subsequent ground reports of May 18, 2022 and July 21, 2022, the Court is of the considered view that prayers 2,3,4,5,6 and 7 have since been dealt with and are now spent.
13. As to prayer No 8, the Court has not been furnished with the Orders and/or Decree issued in Kilgoris Spm ELC Case No E078 Of 2021 by Hon M I G Moranga (SPM) to be able to evaluate the same and make its determination accordingly.
14. Similarly, an application to discharge, vary and/or set-aside an order of another court can not be brought by way of a miscellaneous application.
15. Consequently therefore, Prayer No 8 in the present Application is not granted.
16. As relates to Prayer No 9, the ownership of the Applicants herein over the properties known as LR No Transmara/Kimintet "D"/1077 and LR No Transmara/Kimintet "D"/1078 has not been disputed by any of the Respondents.
17. Section 24, 25 and 26 of the *Land Registration Act*, No 3 of 2012 requires that the legal ownership of any person owning property must be protected at all times so as to uphold the sanctity of title documents and private rights.
18. In essence therefore, the Applicants herein being the registered owners of the properties known as Transmara/Kimintet "D"/1077 and LR No Transmara/Kimintet "D"/1078 are entitled to the exclusive possession and occupation of the same to the exclusion of any other person without their authority.
19. In conclusion, the Court hereby makes the following Orders as appertains the Miscellaneous Application dated April 1, 2022;-
  - A. The 4<sup>th</sup> and 5<sup>th</sup> Respondents in person or through their agents, servants, employees and/or relatives are hereby directed to demolish, remove, relocate, vacate and/or yield vacate possession of any portion of land in their occupation within the Applicants properties known as LR No Transmara/Kimintet "D"/1077 and LR No Transmara/Kimintet "D"/1078 within the next thirty (30) days from the date of this judgement.
  - B. An order of permanent injunction be and is hereby issued against the 4<sup>th</sup> and 5<sup>th</sup> Respondents in person or through their agents, servants, employees and/or relatives restraining them from accessing, trespassing, entering into, occupying, building, cutting trees, grazing cattle and/or in whichever way and/or manner interfering with the quiet occupation and/or possession of the



properties known as LR No Transmara/Kimintet “D”/1077 and LR No Transmara/Kimintet “D”/1078 forthwith.

C. There will be no orders as to costs in this Application.

**DATED, SIGNED & DELIVERED** Virtually in **KILGORIS ELC Court** on **23<sup>RD</sup> NOVEMBER, 2022.**

**EMMANUEL M WASHE**

**JUDGE**

IN THE PRESENCE OF:

COURT ASSISTANT: MR NGENO

ADVOCATE FOR THE APPLICANT: MR OCHWANGI

ADVOCATE FOR THE RESPONDENT: N/A

