



Republic v Land Registrar, Ruiru & 2 others; Waiganjo (Suing on behalf of Leah Wachu Waiganjo) (Exparte); Ngugi (Interested Party) (Judicial Review 9 of 2020) [2022] KEELC 14863 (KLR) (17 November 2022) (Judgment)

Neutral citation: [2022] KEELC 14863 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
JUDICIAL REVIEW 9 OF 2020
BM EBOSO, J
NOVEMBER 17, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

LAND REGISTRAR, RUIRU 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

JANE WANJIKU NGUGI 3RD RESPONDENT

AND

WILLIAM KIBERA WAIGANJO (SUING ON BEHALF OF LEAH WACHU WAIGANJO) EXPARTE

AND

JANE WANJIKU NGUGI INTERESTED PARTY

JUDGMENT

1. On 10/12/2018, the exparte applicant, William Kibera Waiganjo [suing on behalf of Leah Wachu Waiganjo], obtained a Judgment against Jane Wanjiku Ngugi and the Attorney General in Thika CMC Civil Case No 1134 of 2004 in terms of the following verbatim orders:
 1. A declaration that the plaintiff is the legal owner of Land Parcel Number LR. Ruiru East Block 3/2/350.
 2. A declaration that the title issued to the 1st defendant is not genuine and the cancellation of the same.



3. An injunction is hereby issued against the 1st defendant not to trespass, occupy or interfere with the plaintiff's right over LR. Ruiru East Block 3/2/350.
 4. The plaintiff will have costs of the suit with interest.
2. Subsequently, he brought a judicial review motion dated 15/12/2021, seeking the following verbatim judicial review orders from this court:

- “(1) That an order of mandamus to remove into this honourable court directed to the 1st respondent commanding the 1st respondent to recall and cancel the title deeds as regards to land title number Ruiru/Ruiru East Block 2/350 in the names of Jane Wanjiku Ngugi (the Interested Party herein).
2. That an order of mandamus to remove into this honourable court directed to the 1st respondent commanding the 1st respondent to rectify their records to indicate the applicant Leah Wachu Waiganjo as the legal and registered owner of land parcel number Ruiru/Ruiru East Block 2/350 as per the Judgment of the lower court in Thika CMC No. 1134 of 2004.
 3. That a prohibitory order to remove into this honourable court to prohibit the 1st respondent and its agents from requesting and or demanding from the applicant a clearance certificate from Nyakinyua Investment Limited in order to rectify their records to the suit property.
 4. That an order of mandamus to remove into this honourable court to compel the 1st respondent to reconstruct the lost file and/or green card as regards to title number Ruiru/Ruiru East Block 2/350.
 5. That the costs of this application be provided for.
 6. That such further orders or other relief as the honourable court may deem just and expedient to grant.”

3. The above notice of motion is the subject of this Judgment. It was premised on the statement of facts dated 24/11/2020; the ex parte applicant's verifying affidavit sworn on 24/11/2020 and the supplementary affidavit dated 24/5/2022. The motion was canvassed through written submissions dated 24/5/2022, filed through M/s Bwogo Manotia Chepng'eno Associates. The case of the ex parte applicant is that he obtained the above Judgment in Thika CMC Civil Case No. 1134 of 2004 on 10/12/2018. On several occasions, he has requested the Land Registrar – Ruiru, to rectify the records relating to the suit property as per the decree issued in the above suit but the Land Registrar has failed to do so. The Land Registrar has willfully elected to disobey the formal decree of the Chief Magistrate Court issued on 28/1/2020. Consequently, he seeks the above judicial review orders.
4. The Land Registrar opposed the application through a replying affidavit sworn on 9/2/2022 by Robert Mbuba and written submissions dated 12/7/2022, filed by Benson Njagi, Senior State Counsel. The case of the Land Registrar is that the ex parte applicant has deliberately failed to disclose to this court material facts relating to the decree in Thika CMC Civil Case no 1134 of 2004. He contends that because the parcel file relating to the suit property is untraceable, he is required to reconstruct the file and, to do so, he is expected to comply with the requirements of Section 33(5) of the [Land Registration Act](#) in relation to making such inquiries as may be necessary and issuing of a notice in the Kenya Gazette. He adds that in accordance with the requirements of Section 33(5) of the [Land Registration Act](#), he



requested the ex parte applicant to provide a clearance certificate from Nyakinyua Investments Limited but the ex parte applicant failed to do so.

5. The Land Registrar adds that when he sought information from Nyakinyua Investments Limited, he was furnished with information indicating that the suit property was allocated to one Esther Wambui Ngugi. It is his case that given that the said Esther Wambui Ngugi was not made a party to Thika CMC Civil Case No 1134 of 2004, there is need to get clear information relating to the said Esther Wambui Ngugi. The 1st respondent contends that he has always been ready to comply with the decree of the Chief Magistrate Court but the ex parte applicant has failed to provide the relevant documents.
6. Jane Wanjiku Ngugi was joined to the motion as an interested party following an order of this court issued on 8/11/2021 after it emerged that she was a party to Thika CMC Civil Case no 1134 of 2004. She filed an undated replying affidavit and a sworn affidavit dated 12/7/2022. Her case is that she has always been the registered proprietor of Ruiru/Ruiru East Block 2/350 and that the ex parte applicant's decree in Thika CMC Civil Case No 1134 of 2004 was fraudulently obtained. She contends that she was denied justice in the above suit and that the Land Registrar applied his mind properly.
7. I have, considered the motion, the responses to the motion, and the parties respective submissions. I have also considered the relevant legal frameworks and jurisprudence on the key issue that fall for determination in the motion. The single issue falling for determination in this motion is the question as to whether the applicant has established a proper case to warrant issuance of judicial review orders. I will make brief pronouncements on the question.
8. There is common ground that there exists a decree of the Chief Magistrate Court issued in Thika CMC Civil Case No 1134 of 2004. The present motion is therefore essentially an application seeking the enforcement of the said decree. Should an enforcement application such as the motion under consideration be initiated in a court other than the court which issued the decree? Put differently, are the judicial review orders sought from this court necessary in the circumstances of this application? My answer to the above questions is in the negative. I will briefly explain why.
9. All magistrate courts in Kenya are established under Article 169 of *the Constitution*. Article 169(2) empowered Parliament to enact legislation conferring functions and powers on subordinate courts established under that Article. Parliament enacted the Magistrates Courts Act, No 26 of 2015. Section 10 of the Act vests in a magistrate court powers to enforce its orders and decrees in relation to judgments, decrees, directions, orders and all other processes of the court. Section 10 of the Act vests in a magistrates court enforcement powers in the following terms:
 - (1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.
 - (2) A person who, in the face of the Court —
 - (a) assaults, threatens, intimidates, or insults a magistrate, court administrator, judicial officer, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court;
 - (b) interrupts or obstructs the proceedings of the Court; or
 - (c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding, commits an offence.
 - (3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.



- (4) In the case of criminal proceedings, the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which —
 - (a) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court;
 - (b) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or
 - (c) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice, constitutes contempt of court.
 - (5) A police officer, with or without the assistance of any other person, may, by order of a judge of the Court, take into custody and detain a person who commits an offence under subsection (2) until the rising of the Court.
 - (6) The Court may sentence a person who commits an offence under subsection (1) to imprisonment for a term not exceeding five days, or a fine not exceeding one hundred thousand shillings, or both.
 - (7) A person may appeal against an order of the Court made by way of punishment for contempt of court as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the Court.
 - (8) The Chief Justice may make Rules to regulate procedures relating to contempt of court.”
10. It is therefore clear from the framework in Section 10(1) and (3) of the Magistrates Courts Act that if indeed there has been willful disobedience of the decree of the Thika Chief Magistrate Court issued in Thika CMC 1134 of 2004, the said court is vested with full jurisdiction to enforce the decree through the powers vested in it under Section 10 of the Act. The exparte applicant does not, in the circumstances, require additional judicial review orders to enforce the decree in Thika CMC Case No 1134 of 2004. What the exparte applicant needs to do is to enforce the decree which he already holds through appropriate proceedings on the platform of the suit where the decree was issued. It is therefore my finding that the exparte applicant has not established a proper case to warrant issuance of judicial review orders over and above the decree which he already has.
11. Taking into account the background to this motion, it is my view that the parties should bear their respective costs of the motion. Those are the disposal orders of this court.

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

B M EBOSO

JUDGE

Court Assistant: Sydney

