



**Ngerechi & 3 others v Ngerechi (Environment and Land Appeal
21 of 2020) [2022] KEELC 14807 (KLR) (16 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14807 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND APPEAL 21 OF 2020
CG MBOGO, J
NOVEMBER 16, 2022**

BETWEEN

**SAMUEL K NGERECHI 1ST APPELLANT
RICHARD K BOSEK 2ND APPELLANT
WILSON K SANG 3RD APPELLANT
JOSEPH MOSONIK 4TH APPELLANT**

AND

JOSEPH KIPKOECH NGERECHI RESPONDENT

JUDGMENT

1. The appellant herein being aggrieved by part of the ruling of Hon T. A. Sitati, Senior Resident Magistrate Narok delivered on 23rd December, 2015 in Narok SRMCC No. 1 of 2007 appealed to this court vide a memorandum of appeal dated 6th July, 2020 against part of the decision on the following grounds: -
 1. The trial magistrate erred in law in making post judgment orders for the eviction of the appellants who were the decree holders in the suit.
 2. Having found that the appellants were the true owners of land parcels No. Cis-Mara/Lemek Nos. 2814, 2838, 2840, 2841 and 2848 in the judgment of 28th April, 2015 the trial magistrate was without jurisdiction to order an eviction of the appellants.
 3. The trial magistrate erred in law in stating that he had no jurisdiction to cancel mutation from No. 190106 and the derivative title No. Cis-Mara/Lemek/2814.



4. That the trial magistrate erred grievously in offering legal advice to the appellants to file judicial review proceedings in order to cancel the mutation of the respondent and the title issued in reference to No. Cis-Mara/Lemek/2814.
 5. The trial magistrate having found evidence of fraud in issuance of title No. Cis-Mara/Lemek/2814 erred in ordering the eviction of the successive plaintiffs who were the innocent parties.
 6. The order of the trial magistrate for the eviction of the appellants who were the successful parties constitutes a travesty of justice.
2. The appellant prays for: -
1. That this appeal be and is hereby allowed.
 2. The portion of the ruling of the trial magistrate ordering the eviction of the appellants from land parcels Cis Mara/Lemek Nos. 2814,2838,2849,2841 and 2848 be hereby reviewed and set aside.
 3. Costs of this appeal and of the subordinate court be awarded to the appellants.
3. This matter was mentioned on 20th June, 2022 for purposes of disposing the appeal. The counsel for both were present and they agreed to dispose off the appeal by way of written submissions. The counsel for the appellants requested for 30 days whereas counsel for the respondent requested for 21 days. The matter was scheduled for a mention again on 26th September, 2022 to confirm filing of submissions and fixing of a judgment date. On the 26th September, 2022, none of the parties appeared and this court directed the parties to file written submissions within 14 days and a judgment date was given on 10th November, 2011 with further directions that the Deputy Registrar to transmit and serve the parties with a judgment notice.
 4. A perusal of the record indicates that both parties were served with a judgment notice on 28th September, 2022 and 29th September, 2022 respectively vide an affidavit of service sworn on 6th October, 2022 by Kennedy Gori. The same was also served electronically on the 28th September, 2022 at 1:18 pm.
 5. As at the time of writing this judgment and upon enquiry from the registry, none of the parties had filed their written submissions. The conduct displayed by the parties in this appeal is that of willful disobedience of court's directions and orders. It was at the request of both parties that the appeal be disposed off by way of written submissions. Despite issuance of a mention date in the presence of both parties, none of them appeared and neither did they file written submissions.
 6. A memorandum of appeal is a pleading filed alongside other pleadings in a court exercising appellate jurisdiction to hear and determine appeals. Like a plaint which is a formal document which a party files and contains the circumstances leading to a cause of action, the same applies to a memorandum of appeal and which the court cannot on its own presumption proceed to determine the veracity or otherwise unless the appellants inform the court on the mode in which they would want the same to be determined. The appellants sought that the appeal be disposed by way of written submissions. Consequently, this court gave directions that the appeal be disposed off by way of written submissions. I would presume that the respondent in this case was to file written submissions upon service of written submissions by the appellants. In the absence of written submissions, this court cannot suo moto act on the appeal unless parties take charge.



7. In the case of *New Magumoni F C S Limited v Eustus Mutua Musyoka* [2018] eKLR, the court observed as follows:- “For the serial disobedience of court orders, apparently with veritable alacrity, by the appellant, I find that he has failed in his duty to assist the court to further the overriding objective contained in section 1A(1) of the *Civil Procedure Act*, that is to facilitate the expeditious, proportionate and affordable resolution of this dispute. He has failed, as decreed by section 1 A (3) of the *Civil Procedure Act* to faithfully participate in the apposite processes of this court and to comply with the directions and orders of this court.”
8. Also, *Hamilton, CJ in Primor PLC v Stokes Kennedy Crowley* [1996] 2 IR p.459 at p.475 – 476 stated thus: “(a)the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so; but must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on the ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable ...”.
9. While placing reliance on the above two cited authorities, it is my humble view that the appellants are not keen on prosecuting the appeal as they have not complied with this court’s directions to file written submissions.
10. As such, the memorandum of appeal dated 6th July, 2020 is hereby dismissed with costs to the respondent. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 16TH DAY OF NOVEMBER, 2022.

HON. MBOGO C.G.

JUDGE

16/11/2022.

In the presence of:

CA:Chuma

