



**Matunge v Tumpes (Environment & Land Case 2 of 2021)
[2022] KEELC 15605 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15605 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 2 OF 2021
MN GICHERU, J
DECEMBER 20, 2022**

BETWEEN

DANIEL LEMOMO MATUNGE PLAINTIFF

AND

JOSEPH SUPEYO TUMPES DEFENDANT

RULING

1. This ruling is on the Originating Summons dated March 9, 2021. It is by the applicant, Joseph C. Supeyo Tumpes, and seeks the following orders:
 - a. That the joint ownership in respect of L.R. No. Kajiado/Lorngosua/1569 situate in Kajiado be served and that the same be held by the parties herein as tenants in common.
 - b. That the court compels the respondent; Daniel Lemomo Matunge to sign all relevant forms to facilitate partitioning of the suit property into two portions each measuring 3 acres and release the original title to the applicant.
 - c. That in the alternative the court do authorize and the Deputy Registrar to sign all the relevant documents which the Respondent may refuse to sign to facilitate the partitioning of the suit property into two portions.
 - d. That the court do direct the Land Registrar to issue separate and distinct title deeds for the partitioned parcel of land in the names of the Applicant and the Respondent.
 - e. That the Applicant be allocated the portion of land, which he has already developed.
 - f. That the Respondent bears all the costs incidental to the filing of this application.
2. The summons is supported by an affidavit dated March 9, 2021 sworn by the Applicant in which he deposes that he has fulfilled all the requirements in the judgement dated June 20, 2018 as to



the payment of the balance of purchase price and it is the respondent to blame in the delay of its implementation.

3. The summons is opposed by the Respondent who has sworn a replying affidavit dated April 9, 2021 in which he says that the summons is premature and should not be considered at this juncture. He is also opposed to the idea of a common tenancy.

Finally, the Respondent says that he is ready to refund the purchase price for the three acres that the Applicant paid for.

4. Only the Applicant's counsel filed written submissions dated May 30, 2022. In the said submissions counsel has identified three issues of determination as follows:
 - a. Whether the parties are joint tenants with respect to the property known as Kajiado/Lorngosua/1569.
 - b. Whether the joint tenancy should be severed and whether the Applicant has satisfied the conditions for such severance.
 - c. Who should bear the costs?
5. I have carefully considered the application in its entirety including the affidavits, annexures and the submissions filed by the Applicant's counsel. I find that the issues as raised by the Applicant's counsel will determine the dispute.
6. On the first issue, I find that a joint tenancy has been proved. There is sufficient evidence to prove that the Applicant paid the sums adjudged by the court. This means that he is now a joint tenant with the Respondent.
7. On the second issue, I find that the joint tenancy is not appropriate for parties that are not in good terms like the parties herein. The law also discourages joint tenancy between people who are not relatives. It is also not fair to force the Applicant into a relationship that he is not comfortable with.
8. On the final issue, I find that it is the Respondent who should bear the costs of this summons because he is the cause of the delay. Having received the sums adjudged by the court four (4) years ago, he cannot be heard to say that it is premature to file the current summons.
9. The Constitution and the Laws of Kenya require that all disputes and especially land disputes be heard and determined expeditiously. This requirement is to be found in **Article 159** of the **Constitution** which provides that *justice shall not be delayed*. The same requirement is to be found in **Sections 1A** of the **Land Procedure Act** and **3** of the **Environment and Land Court Act**.
10. For the above stated reasons, I allow his summons dated March 9, 2021 as drawn.

It is so ordered.

Dated signed and delivered virtually at Kajiado this 20TH day of December, 2022.

M.N. GICHERU

JUDGE

