



Kamau & another (Administrators of the Estate of the Late Lucy Nyambura alias Rachel Nyambura Kamau) v Gathega & another (Environment and Land Appeal 66 of 2015) [2024] KEELC 700 (KLR) (8 February 2024) (Ruling)

Neutral citation: [2024] KEELC 700 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL 66 OF 2015
JE OMANGE, J
FEBRUARY 8, 2024**

BETWEEN

**JUSTUS NDUNGE KAMAU 1ST APPELLANT
JUDY WANJIKU KAMAU KIRIRI 2ND APPELLANT
ADMINISTRATORS OF THE ESTATE OF THE LATE LUCY NYAMBURA
ALIAS RACHEL NYAMBURA KAMAU**

AND

**JOSEPH KIMANI GATHEGA 1ST RESPONDENT
GITHUNGURI RANCHING CO LTD 2ND RESPONDENT**

RULING

1. There are two applications that are coming up for determination. In the first application dated 11th July, 2023 the Applicant seeks an order to remove and vacate orders filed against title number Ruiru Kiu Block 2/4268 or any other subdivisions arising there from being Ruiru Kiu Block2 Block 2 Githunguri/5794,5795,5796,5797,5798,57909,5800,5801,5802 and 5803 hereinafter referred to as the suit properties, It is the Applicants case that the Respondent had initiated a suit at Thika Law Courts CMCC 1234/2010 in respect of the suit properties.
2. After the suit was determined in her favour the Respondent filed HCCA 397 of 2013 challenging the pecuniary jurisdiction of the Magistrates Court to hear the matter. The High Court issued injunctive orders to preserve the suit property which order was issued to preserve the suit properties. In the meantime, HCCA 397 of 2013 was transferred to the ELC as Appeal no 66 of 2015.
3. The parties recorded a consent that Thika CMCC 1234 of 2010 be reinstated for hearing in the Environment and Land Court. The matter then proceeded for hearing as ELC 136 of 2020 which



matter has been finally concluded and a Judgement entered in favour of the Appellant the current Applicant in this matter who was the 1st Defendant in ELC 136 of 2020.

4. In spite of having a decree in his favour, the Applicant herein has been unable to enjoy the fruits of his Judgement as the injunctive reliefs earlier granted in HCCA 397 of 2013 are still registered against the suit properties and have not been lifted as it is not clear how HCCA 397 of 2013 moved to the Environment and Land Court.
5. After the Applicant filed the application and had been given a Ruling date the Respondents in the application filed an application dated 24th November, 2023 seeking leave to change their advocates and also seeking to arrest the Ruling. The Respondents argue that they have filed an appeal against the decision in ELC 136 of 2020 and will suffer substantial loss if the application to vacate the injunctive orders against the suit properties is allowed.
6. The issues before the court for determination are; Should the court vacate the injunctive orders. Should the court allow the advocates to come on record. Should the court issue fresh injunctive orders.
7. On the question of the injunctive orders which were issued in High Court Civil Appeal No 397 of 2013, the orders which were issued on 9th December, 2013 were clear that they were issued pending the hearing and determination of the appeal. Once the appeal was determined the interlocutory orders were to automatically lapse.
8. The only confusion that arose is that there is no record of the file movement from High Court to Environment and Land Court and hence no nexus at least by way of a written communication that can be given to the Ministry of Lands that HCCA 397 of 2013 in respect of which injunctive orders were issued is one and the same as ELCA APP 66 of 2015 which was finalized by consent on 11th December, 2018.
9. I have looked at the pleadings, proceedings and orders issued by the court. It is clear that the parties in the two matters are the same, the issues were the same. There is no doubt that HCCA 397 of 2013 was finalized as Appeal 66 of 2015. This is further confirmed by the fact that even in the application which the Applicant has filed dated 24th November, 2023 they do not challenge that the two file numbers refer to one and the same appeal which was concluded. They only argue that the injunctive orders should remain in place as they have filed an appeal against the decision in ELC 136 of 2020.
10. The Respondents would thus wish this court to perpetuate a situation brought about by an administrative lapse to prevent the Applicants from enjoying the fruits of their Judgement.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 8TH DAY OF FEBRUARY 2024.

JUDY OMANGE

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of: -

Mr. Njonjo for Appellants



Mr. Kangogo for the Respondent

Steve - Court Assistant

