



REPUBLIC OF KENYA



KENYA LAW
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**Kabugua v Muranga (Environment and Land Miscellaneous Application
E004 of 2023) [2024] KEELC 5069 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5069 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E004 OF 2023**

LN GACHERU, J

JULY 4, 2024

**IN THE MATTER OF: MURANG'A ELC NO.35 OF 2019 JOSEPH
NJUGUNA KABUGUA VS PETER NJUGUNA GIKO AND JOHN THUO**

GIKO (O.S.)

AND

**IN THE MATTER OF: EXECUTION OF JUDGMENT DELIVERED ON 26TH
MAY 2021, AND THE SUBSEQUENT DECREE ON LAND PARCEL**

NO.LR. NO.LOC.1/THUITA/1078 THIKA

AND

**IN THE MATTER OF: OF THE REFUSAL BY THE LAND REGISTRAR
MURANG'A TO CANCEL THE REGISTRATION OF ORDERS OF THE
COURT IN THIKA CIVIL CASE NO.1284 OF 1995 ISSUED ON 24TH
JUNE 1998, IN THE GREEN CARD NOTED AS ENTRY NO.5**

AND

**IN THE MATTER OF REINSTATEMENT OF THE OWNERSHIP OF LAND
PARCEL NO.LR.LOC.1/THUITA/1077 AND LR NO.LOC.1/THUITA/1078**

IN THE NAME OF JOSEPH NJUGUNA KABUGUA IN COMPLIANCE

WITH THE ORDER OF THE COURT

APPLICATION

BETWEEN



JOSEPH NJUGUNA KABUGUA APPLICANT

AND

LAND REGISTRAR MURANGA RESPONDENT

RULING

1. The Applicant herein Joseph Njuguna Kabugua, filed this Notice of Motion Application dated 29th October, 2023 premised on Order 51, Rule 1 of the *Civil Procedure Rules* and sought for the following orders against the Respondent herein:
 1. That an order do issue that the Land Registrar Muranga, be served with a Notice to Appear on a date reserved by Court to show why he/she has refused and/or declined to effect the Judgment delivered on 26th May 2021, the order emanating therefrom and the subsequent decree issued in Murang'a ELC No.35 of 2019 (O.S.) and also the Ruling delivered on 6th July, 2023, and the subsequent Order issued by the Honourable Court on/against the title to the suit land.
 2. That in the alternative, the Land Registrar, Murang'a be compelled by this Honourable Court to unconditionally register and effect the Ruling delivered on 6th July, 2023, and its subsequent order emanating therefrom in Murang'a ELC No.35 of 2019 (O.S.) specifically cancelling the registration of the orders of the court issued on 24th June, 1998, in Thika Civil Case No. 1284 of 1985, currently registered in the Green Cards of Land Parcel Numbers LOC.1/Thuita/1077, and LOC.1/Thuita/1078, noted as entry No.5 within 7 days from the date of service of this Order upon him.
 3. That, subsequently, an order do issue requiring the Land Registrar, Murang'a to unconditionally reinstate the Appellants ownership in the records of Land Parcel Numbers LOC.1/Thuita/1077 and LOC.1/Thuita/1078 being subdivisions of Land Parcel Numbers LOC.1/Thuita/576 within 7 days from the date of service of this Order upon him.
 4. That costs be provided for.
2. The Application is supported by the grounds set out on the face of the said Application and on the Supporting Affidavit of Joseph Njuguna Kabugua sworn on 29th October, 2023.
3. The applicant averred that he is the owner of land parcel numbers LOC.1/Thuita/1077 and LOC.1/Thuita/1078 (the suit properties), and that both land parcels were subdivisions of Land Parcel number LOC.1/Thuita/576.
4. The Applicant's case is that he was the Plaintiff in Murang'a ELC No.35 of 2019, wherein , this Court through a Judgment delivered on 26th May, 2021, declared him to be the owner of land parcel number LOC.1/Thuita/1078, and revoked the Respondent's title to the said land parcel. He further stated that his ownership over land parcel number LOC.1/Thuita/1077, was affirmed by the Certificate of Confirmation of Grant issued on 7th June, 2022, in Kandara SPMCC SUCC. Cause.No.268 of 2021.
5. The Applicant further contended that this Court issued directives in its Judgment dated 26th May, 2021, cancelling the registration of the Orders of the Court in Thika Civil Case No.1284 of 1995, dated 24th June, 1998, appearing on the Green Card to the suit properties as entry number 5.



6. Further, the Applicant averred that the Respondent thereafter approached the Court through an Application dated 19th October, 2022, seeking a review of the Judgment dated 26th May, 2021, which Application was dismissed by the Court with costs to the Applicant.
7. It was the Applicant's further contention that he wrote to the Respondent through his Advocates through a letter dated 27th July, 2023, notifying him that the Judgment of this Court dated 26th May, 2021, cancelled the registration of the orders of the Court dated 24th June, 1998, issued in Thika Civil Case No.1284 of 1995, and which appeared on the Green Card in respect of the suit property as entry number 5. He annexed the letter from his Advocates dated 27th July, 2023, marked as "JNK-2".
8. Further, the Applicant contended that his Advocates wrote to the Respondent twice: on 15th August, 2023; and, 15th October, 2023, requiring the Respondent to register this Court's decree dated 6th July, 2023, emanating from the Judgment dated 26th May, 2021; however, the Respondent did not comply.
9. That upon being declared by this Court as the lawful proprietor of the suit land, the Applicant attempted to dispose of the said land, but the sale could not proceed because the property is still encumbered with the registration of the orders of the Court dated 24th June, 1998, issued in Thika Civil Case No.1284 of 1995, which order was nullified by this Court's Judgment dated 26th May, 2021; and the Respondent has refused to give effect to the foregoing nullification/cancellation of title to the suit land.
10. It was the Applicant's further contention that the Respondent has completely declined to register this Court's Orders, which orders named the Applicant as the lawful proprietor of the suit land, thus necessitating the filing of the present suit. He added that he executed a contract for the sale of the suit property with a buyer, which transaction has come to a halt due the Respondent's refusal to make the necessary correction regarding ownership of the suit properties.
11. It was his further contention that the buyer in question could well demand a refund of the deposit paid to the Applicant as part payment for the suit land, which amount the Applicant has already utilized thus, exposing the Applicant to criminal charges of obtaining money through false pretense.
12. He contended that it is in the interests of justice that the current Application be allowed as the Respondent has refused to register him as the proprietor of the suit property.
13. The Application is opposed by the Respondent through the Replying Affidavit sworn by E. Muthoni Mputhia on 13th December, 2023, in her capacity as the Land Registrar, Murang'a County.
14. The Respondent contended that the Court Order dated 12th July, 2023, that was issued in ELC Civil Case No. 35 of 2019, was served upon her and that upon perusal of the same, she was not able to discern the land parcel number of the property which is the subject of the aforesaid Court order.
15. It was the Respondent's further contention that as the Court Order dated 12th July, 2023, did not disclose the land parcel number of the piece of land to which it applied, she had no option but to reject the same because it presented an ambiguity. She added that it would have been more advisable had the Applicant sought to amend the aforesaid Order of the Court by inserting the relevant land parcel number instead of commencing the current Application. Accordingly, she prayed for dismissal of the Application due to lack of merit.
16. The said Application was canvassed by way of written submissions.



Applicant's Submissions

17. The Applicant filed written submissions on 19TH December, 2023, through the Law Firm of Wambo Muyala & Company Advocates.
18. He reiterated the averments contained in his Supporting Affidavit dated 29th October, 2023. And further submitted that the net effect of the foregoing directives issued by this Court on 26th May, 2021, was to bestow upon him ownership over the suit properties and to revoke the Respondent's ownership of the same.
19. The Applicant also submitted that in dismissing the Respondent's Application dated 19th October, 2022, the Court on 6th July, 2023, declared him the legal proprietor of the suit land; However, the Respondent has neglected to put into effect the foregoing lawful order.
20. He identified a single issue for determination namely, whether the subject Application is merited.
21. The Applicant cited the provisions of Sections 79 and 80 of the *Land Registration Act*, 2012, and urged the Court to compel the Respondent to rectify the Land Register and reinstate the Applicant as the registered proprietor of the suit property. Reliance was placed on the decision of the Court in the case of *Mary Ruguru Njoroge v Hon. Attorney-General*(2014) eKLR; where the court held; the court too has powers to order for rectification of the title or register in appropriate circumstances.....”.
22. The Applicant further submitted that his rights of proprietorship over the suit properties is pursuant to the provisions of Sections 24 and 26 of the *Land Registration Act*, 2012.
23. The Respondent did not file written submissions, and the Court, will only rely on the Replying Affidavit of E. Muthoni Mputhia, dated 13th December, 2023.
24. Having considered the instant Application, the reply by the Respondent, the written submissions by the Applicant and all the annexures attached to the Application, this court finds the single issue for determination is as follows;
 - I. Is the Applicant entitled to the Orders sought?
25. Section 24(a) of the *Land Registration Act*, 2012, provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
26. Further, Section 26 (1) of the said *Land Registration Act*, 2012, states as follows:

“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –

 - a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”



27. Section 79 of the [Land Registration Act](#), donates power to rectify any register or title to the Land Registrar. The said section states as follows:
- 79(1) The registrar may rectify the register or any instrument presented for registration in the following cases;-
- (a) In formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;
 - (b) In any case and at any time with the consent of all affected parties; or
 - (c) Upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel.
28. The Court also has powers under the provisions of Section 80 (1) of the [Land Registration Act](#), 2012, to order rectification of title or register. Section 80 (1) provides:-
- (1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
29. The Court in the case of [Mary Ruguru Njoroge –vs- John Samuel Gachuma Mbugua & 4 Others](#) [2014] eKLR understood the meaning and import of Section 80(1) of the [Land Registration Act](#), 2012 as follows:
- “In my view, the mistake referred to under section 80 (1) includes both a slip like a typographical error and a substantive mistake like the registration of a wrong or erroneous name. In short, the court wields powers equivalent to those donated by statute to the registrar under Section 79 of the [Land Registration Act](#). A party seeking rectification may therefore elect to attend before the registrar or appear before the court and prompt the process of rectification of a title or a register.”
30. In the subject Application, the Applicant’s claim of ownership over the suit properties is founded on the decision of the Court dated 26th May, 2021, and consequential orders thereto.
31. In the instant Application, the Applicant is seeking for rectification of the register pertaining to the suit land, an issue which was conclusively determined as per the Judgment of this Court dated 26th May, 2021.
32. In the said Judgement, delivered on 26th May 2021, this Court issued the following orders in Murang’a ELC No.35 of 2019 (O.S.):
- a. That the Registration of Orders of the Court in Thika Civil Case No.1284 of 1995, issued on 24th June, 1998, in the Green Card noted as entry No.5 are null and void and are hereby cancelled.
 - b. That the Defendant’s Notice of Motion Application dated 19th October 2022, be and is hereby dismissed with costs to the Plaintiff/Respondent.
 - c. That the Defendants/Respondents bear the cost of the Plaintiff’s Application dated 19th December 2022.



33. From a perusal of the pleadings, evidence and submissions tendered in support of this Application, it is not in dispute that this Court declared the Applicant to be the lawful proprietor of the suit properties.
34. The Respondent has opposed the present Application on grounds that the Court order presented by the Applicant did not disclose the land parcel number in question; and therefore, the said order was ambiguous and incapable of being given effect to by her office.
35. It is noteworthy that in the subject Application, the Respondent did not provide the Court with the responses (if any) to the two letters from the Applicant's Advocates dated 15th August, 2023, and 15th October, 2023, requiring the Respondent to register this Court's decree dated 6th July, 2023, emanating from the Judgment dated 26th May, 2023.
36. It is reasonable to expect that had the Respondent written to the Applicant's Advocates in response to the letters dated 15th August, 2023, and 15th October, 2023, seeking clarity concerning, the land parcel number that is the subject of the Judgment dated 26th May, 2021, the Applicant probably would have moved this Court to review its Order by inserting the necessary land parcel number thereon; thus, saving the Applicant valuable time and costs.
37. In its Ruling delivered on 6th July, 2023, which dismissed the Respondent's Application dated 19th October, 2022, seeking review of the Judgment dated 26th May, 2021, this Court declared as follows:

“the Defendant proceeded to cause the registration of the said order in a bid to defeat the judgment of this court, considering the timing when the order was registered. This is no doubt a total and blatant disregard of the judgment of this Court. It is not clear why the Land Registrar would cause the said order to be registered oblivious of the fact that the order is stale”.
38. It is evident from the decision dated 26th May, 2021, which decision nullified the entries marked number 5 on the Green Card to the suit properties that this Court was addressing itself to the suit land.
39. Be that as it may, the Respondent could easily have sought for the registration number of the land parcel, which is the subject of the Judgment delivered on 26th May, 2021, and consequential decrees and orders, through a written request to the Deputy Registrar of this Court.
40. It is regrettable that the Applicant has been denied the fruits of a successful judgment for a period of about three (3) years over a matter which would have been clarified or settled through a simple exchange of communication between the Respondent and the Applicant's Advocates or, between the Respondent and the Court.
41. Accordingly, the Court holds and finds that the prayers No. 4 and 5 of the Notice of Motion Application dated 29th October, 2023, are merited, and the said prayers are allowed entirely.
42. The Respondent is condemned to bear the costs of this Application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 4TH DAY OF JULY 2024.

L. GACHERU

JUDGE

Delivered online in the presence of:



Joel Njonjo – Court Assistant.

Mr Oyugi H/B Mr Andati for the Applicant

N/A for the Respondent

L. Gacheru

Judge

04/07/2024

