



Angwenyi (Suing as the Legal Administrator of the Estate of Hebisiba Bosibori Angwenyi -Deceased) v Ogake & 3 others (Environment & Land Case 22 of 2021) [2024] KEELC 6647 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6647 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 22 OF 2021**

**JM KAMAU, J
OCTOBER 3, 2024**

BETWEEN

**ERNEST ANGWENYI PLAINTIFF
SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF HEBISIBA
BOSIBORI ANGWENYI -DECEASED**

AND

**HELLEN OGAKE 1ST DEFENDANT
SEVENTH DAY ADVENTIST CHURCH E.A UNION LIMITED 2ND
DEFENDANT
COUNTY SURVEYOR NYAMIRA COUNTY 3RD DEFENDANT
THE HON GENERAL 4TH DEFENDANT**

RULING

1. Judgment in this case was delivered on 9/4/2024 and a Decree drawn to the effect that;-
 - i. There be stay and is hereby granted an order for rectification of the register over and in respect of L.R Nos. Nyansiongo Settlement Scheme/16 and 17 so that the 2 parcels of land are restored to their original positions before any transfer of any of them was executed and before any mutations were registered in respect of any of the 2 parcels of land and in accordance with the original Map.
 - ii. The 3rd Defendant will bear the Costs of the suit.



2. Thereafter, on the 10/7/2024, the 1st Defendant, Hellen Ogake Aondo moved this court with an Application for the substantive order that:-

“pending the hearing and final determination of the intended appeals in the Court of Appeal, this Honourable court be pleased to stay the Decree dated 9/4/2024 and issued on 30/4/2024.”

3. A Notice of Appeal has been filed by the 2nd Defendant and as at the time of filing the Application, the 1st Defendant had equally prepared her Notice and was to file the same. Directions at the Court of Appeal had already been given by the Court in Civil Application No.E080 of 2024. The 1st Defendant admits that she was yet to comply with the Court of Appeal Directions. In her Affidavit sworn on 10/7/2024 the 1st Defendant is concerned that should the execution of the Decree take place the several other people, most of who were not parties to this suit, would certainly be affected. She also deposes that in the Court of Appeal, there is an order of Status Quo to be maintained granted following an Application by the Plaintiff/Respondent in this case. She did attach to her Affidavit a copy of the Notice of Appeal dated 23/4/2024, a copy of the Directions in respect to the Application in the Court of Appeal dated 25/6/2024. The Application in the Court of Appeal is dated 21/6/2024, by way of Notice of Motion under certificate of urgency.

4. This being the case, and particularly since the Application which is at an advanced stage of being heard in the higher court seeks conservatory orders restraining the alienation, wastage and/or any adverse dealings with the suit property. I will leave the matter to the wisdom of the Court of Appeal and henceforth stay my Decree and specifically the orders directing “... the rectification of the Register over the parcel of land known as L.R. No.nyansiongo Settlement Scheme/16 & 17 restoring the 2 parcels of land to their original positions before any transfer of the same was executed and before any mutations were registered in respect of any of the 2 parcels of land and in accordance with the original Map.....”

5. But for the abundance of caution I order that the 2 Title Deeds and any other Title Deed emanating therefrom be deposited in court. Costs to be in the cause.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 3RD DAY OF OCTOBER, 2024.

MUGO KAMAU

JUDGE

In the Presence of:-

Court Assistant: Brenda

Plaintiff's Counsel: Mr. Mulisa

Defendants' Counsel: Mr. Soire for the 1st and 2nd Defendants

Mr. Nderitu for the 3rd and 4th Defendants

