



**Muita (Suing on Behalf of Ndundu Welfare Men & Women Group) v Kagunya
(Sued as Administrator of Meshack Mureithi Wambugu) (Environment &
Land Case 628 of 2016) [2024] KEELC 6549 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6549 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 628 OF 2016
LN MBUGUA, J
OCTOBER 3, 2024**

BETWEEN

HENRY NJUGUNA MUITA PLAINTIFF

SUING ON BEHALF OF NDUNDU WELFARE MEN & WOMEN GROUP

AND

ALICE WAMBUI KAGUNYA DEFENDANT

SUED AS ADMINISTRATOR OF MESHACK MUREITHI WAMBUGU

RULING

1. The record indicates that on 27.11.2017, ex parte judgement was entered for the Plaintiff as prayed in the plaint. The defendants then filed an application dated 3.9.2018 seeking to set aside the said judgment and to be allowed to defend the suit, but the said application was withdrawn on 17.1.2019. Thereafter, counsel for the defendant filed an application dated 15.9.2023 seeking orders to substitute the then deceased defendant with his wife, of which the application was allowed on 31.10.2023. The defence advocates then filed an application dated 12.3.2024 to cease acting which application was allowed on 20.3.2024.
2. What is now before this court is the Plaintiff's Notice of Motion application dated 22.5.2024 seeking the following orders;
 - “i. i. Spent.
 - ii. That pending hearing and determination of the application interparties, the defendant/respondent or servants or agents be restrained transactions of any manner with copy pasted Ruiru/Kiu Block 6/109 unto Ruiru/Kiu Block 6/998.



- ii. That the defendant/respondent have obtained a parallel lease so as to defeat decree issued on 27.11.2017 and is in verge of misusing the same or dispose to detriment of the plaintiff/applicant by copy pasting Ruiru/Kiu Block 6/109 on to Ruiru/Kiu Block 6/998.
 - ii. That The Ruiru Land Registrar be restrained from allowing any transactions or entries in the register of Ruiru/Kiu Block 6/109 pending hearing of the application interparties.
 - ii. That the Ruiru land registrar rectify or cancel the entries of Ruiru/Kiu Block 6/109 from names of defendant/respondent to plaintiff/applicant.
 - ii. The hon. court be pleased to allow joinder of Ruiru land registrar and district surveyor as interested parties to this suit, allow them to file all the necessary document in respect of their interest as may be necessary to defend this suit pending interparties hearing.
 - ii. That upon prayer 6 above this hon court be pleased to suspend or halt any dealings with Ruiru/Kiu Block 6/109 for not disclosing existing decree.”
3. The application is premised on grounds on its face and on the Plaintiff’s supporting affidavit sworn on 22.5.2024. He avers that the Plaintiff is the registered owner of parcel Ruiru/Kiu Block 6/998 and that it has now emerged that a new map has been issued with respect to the said parcels.
 4. That as a consequence, a parallel title to his land was created as Ruiru/Kiu Block 6/109 and issued to the Defendant on 14.12.2023, thus the Plaintiff’s title number does not exist in the new register.
 5. The Plaintiff’s claim as per their amended plaint dated 16.8.2016 was that they own parcel Ruiru/Kiu/998 which was however occupied by the defendant. Their claim was allowed in the judgment of 27.11.2017.
 6. The plaintiff contends that a new map and registration have been generated to defeat justice whereby parcel Ruiru Block 6/109 in the name of defendant has been pasted upon the suit parcel Ruiru Block 6/998, making it difficult to enforce the decree. That is why the plaintiffs want the Ruiru Land Registrar and District surveyor to be joined in these proceedings to defend the suit as they are the ones who came up with the parallel documents.
 7. As the matter stands, there is a judgment and a decree. How then can the court join parties to defend the suit at this stage of the case!. What more, the issues relating to generation of new maps and titles are in the realm of evidence thus inviting prove. It is noted that the documents which the plaintiffs desire to interrogate relating to parcel 6/109 were not a subject of contest in the judgment delivered on 27.11.2017. In essence, this court would be entertaining a re-trial post judgment when that judgment is still intact. I pose the question, what would be the end result? Another judgment perhaps?. I find that the prayer to join parties to defend the suit post judgment is inconsistent with the provisions of Article 50 (1) of the Constitution. As it were, the prayers sought are untenable.
 8. I therefore find that the application dated 22.5.2024 is unmerited and is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA



JUDGE

In the presence of:-

Wanyoike for the Plaintiff

Court assistant: Joan

