



**Guandai (Suing as the Administrator of the Estate of Guandai
Karugu (Deceased)) v Twei & 4 others (Environment & Land Case
65 of 2019) [2024] KEELC 7327 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7327 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 65 OF 2019
MN GICHERU, J
NOVEMBER 6, 2024**

BETWEEN

**MAGDALENE NYOKABI GUANDAI PLAINTIFF
SUING AS THE ADMINISTRATOR OF THE ESTATE OF GUANDAI KARUGU
(DECEASED)**

AND

**PETER KIBET TUEI 1ST DEFENDANT
MOHAMMED M OMAR 2ND DEFENDANT
HASSAN SHABA ADAN 3RD DEFENDANT
LAND REGISTRAR, KAJIADO 4TH DEFENDANT
SAMUEL PARTET MEPUKORI 5TH DEFENDANT**

RULING

1. This ruling is on the notice of motion dated 28/9/2023. The motion which is by the 5th defendant is brought under Orders 8, rule 5, 40 rules 1 and 2 and 1 rule 10 Civil Procedure Rules, Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Section 71 (1) of the Registered [Land Act](#).
2. The motion seeks the following orders.
 - i. That leave be granted to the 5th defendant to amend his statement of defence and counterclaim.
 - ii. That the applicant be allowed to register cautions against land parcels Nos. Kajiado/Olekasasi 2175-83 which have emanated from the subdivision of L.R. No. Kajiado/Olekasasi/12.
 - iii. That an order issues joining the Land Registrar Ngong as an interested party.



- iv. That a mandatory order be issued to the interested party herein the Land Registrar Ngong to cancel all registration of titles made out of the land known as L.R. Kajiado/Olekasasi/12 from June 30th 1975 and be ordered to return in to its original position.
 - v. That the costs of this application be provided for.
3. The motion is based on nine (9) grounds and is supported by an affidavit dated 28/9/2023. In summary, the above material discloses as follows. Firstly, the applicant has a power of attorney from Winfred Waruguru Mepukori. Secondly, he seeks to stop the illegal disposition of the nine (9) subdivisions of the suit land. Thirdly, the said subdivision of the suit land is illegal as it goes against the order dated 20/6/2016 issued by Justice Okong'o which inhibited all dealings with the suit land. Fourthly, the suit parcels were transmitted to Guandai Karugu holdings on 28/10/2021 and subdivision has already commenced. Fifthly, it is only prudent to join the land registrar Ngong and the Attorney General as interested parties as they have a role to explain why the illegal cancellation of the applicant's name from the register of the suit land occurred. Finally, unless the orders sought are allowed, the applicant's right to the suit land shall be irredeemably lost.
 4. The 5th defendant's affidavit has a number of annexures which include copies of the following documents.
 - a. Power of Attorney dated 27/3/2023.
 - b. Green cards for the nine (9) subdivisions.
 - c. Copy of order issued on 20/6/2016.
 - d. Copy of green card for the suit land showing the name of Pertet George Mepukori as the first registered owner of the suit land.
 5. Even though Miss Gichuki for the plaintiff is on record as saying that she filed a response to the motion, I have not seen any such response. Neither have I seen the written submissions by learned counsel for the parties. Be that as it may, I will proceed to determine the motion because I find that the main orders sought are within the discretion of the court to grant.
 6. I allow the prayer seeking to amend the 5th defendant's defence and counterclaim because under Order 8 rules 5 of the Civil Procedure Rules, amendment of pleadings can be at any time before judgment. It is important that the pleadings be amended so that the issues in dispute can be adjudicated upon. The plaintiff as well as the other parties will not suffer any prejudice because they too will be at liberty to amend their pleadings.
 7. I find that it is fair and just to allow the second prayer because if the subdivisions of the suit land are not restricted, then they could be alienated during the pendency of the case. This will complicate this suit because more amendments would be sought. In this regard, I issue an order inhibiting any dealings with L.R. Nos. Kajiado/Olekasasi 2175 -83 pending the hearing and determination of this case.
 8. As for the 3rd prayer, I find that the Land Registrar and the Honourable the Attorney General are necessary parties in this suit. This is especially so because the Land Registrar is the custodian of the records relating to the suit parcel.
 9. Finally, on the fourth prayer, I find that since an order of inhibition has already been issue, the fourth prayer should be in the pleadings and sought as a final order. The 5th defendant should put it in his amended counterclaim.



In conclusion, therefore, the notice of motion dated 28/9/2023 is allowed in terms of prayers 1, 2 and 3. Costs in the cause.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 6TH DAY OF NOVEMBER 2024.

M.N. GICHERU

JUDGE

