



Republic v Land Registrar, Trans-Nzoia County; Mureithi & 2 others (Exparte) (Suing as administrators of the Estate of Ruth Muthoni Rudorot) (Environment and Land Case Judicial Review Application E001 of 2024) [2024] KEELC 7576 (KLR) (5 November 2024) (Judgment)

Neutral citation: [2024] KEELC 7576 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E001 OF 2024**

FO NYAGAKA, J

NOVEMBER 5, 2024

JUDGMENT

IN THE MATTER OF AN APPLICATION BY JOSEPH MUREITHI, ISAAC RODROT & JOSHUA GITATHI RODUROT (SUING AS ADMINISTRATORS OF THE ESTATE OF RUTH MUTHONI RUDOROT) FOR LEAVE TO APPEAL FOR AN ORDER OF MANDAMUS, DIRECTED TO THE LAND REGISTRAR, TRANS-NZOIA COUNTY

AND

**IN THE MATTER OF LAW REFORM ACT
SECTION 8 AND 9 CHAPTER 26 LAWS OF KENYA**

AND

IN THE MATTER OF KITALE ELC NO. 128 OF 2016

BETWEEN

REPUBLIC APPLICANT

AND

LAND REGISTRAR, TRANS-NZOIA COUNTY RESPONDENT

AND

JOSEPH MUREITHI EXPARTE

ISAAC RODROT EXPARTE

JOSHUA GITATHI RODUROT EXPARTE

SUING AS ADMINISTRATORS OF THE ESTATE OF RUTH MUTHONI RUDOROT



JUDGMENT

1. By a Notice of Motion dated 04/04/2024 the Applicants moved this Court for an order of Judicial Review under Order 53 Rule 3 and 4 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act Chapter 26 Laws of Kenya. They sought the following orders:-
 1. ...spent
 2. That an order of mandamus be issued against the Respondent, the Land Registrar, Trans-Nzoia County to compel the said Respondent to implement the decree issued on 31st March 2023 in Kitale ELC No. 128 of 2016 Joseph Muriithi, Isaac Rudurot, and Joshua Gitahi Rudurot vs Nancy Ruiru Rudurot, NEMA and Trans- Nzoia County Environment Officer.
 3. That the respondent may be condemned to pay. Costs of this application.
2. The Application was based on six grounds, the first one being that on 31/03/2023 this honorable court issued a decree in Kitale ELC No. 128 of 2016. They gave the terms of the decree. These were that;
 1. The National Environmental Management Authority and the Trans Nzoia County Environment Officer are hereby joined to the instant suit as the second and the third defendants, respectively.
 2. The County Land Registrar and the County Surveyor Trans Nzoia County as well as the Trans-Nzoia County Environmental Officer shall by notice convene the parties at the site of the disputed boundary and the County Land Registrar and County Surveyor shall ascertain the correct boundaries of title number Trans-Nzoia/ Suwerwa/471 and the original title number Trans Nzoia/Suwerwa/470 which has since been subdivided into Trans-Nzoia/ Suwerwa/1356 and 1357 and affix the appropriate beacons thereto and the County Environment Officer shall advise the parties as appropriate regarding occupation and use of the river Trans-Nzoia wetlands for its proper protection under the law.
 3. The survey exercise in order no. (b) above by the County Land Registrar, the County Surveyor and the County Environment Officer shall commence from the higher and arable ground and proceed down the incline towards the river.
 4. During the survey exercise 6.62 hectares shall be parceled out for each family from the upper boundary abutting road fronting the higher ground of the farm towards the direction of the river while retaining the position of the current ground boundary, however far that boundary would go to accommodate the acreage stated on the respective title deeds.
 5. In conducting the beaconing and boundary adjustment exercise the County Surveyor and the County Land Registrar will not be limited to their straight boundary set in the mutation regarding the swampy area, but they shall have greater regard to the accommodation of parcel acreages for plot numbers Trans-Nzoia/Suwerwa/417 and No. 471.
 6. No party shall thereafter fence their land up to the very banks of the river or utilize the wetlands in a manner inconsistent with the law, and the parties shall otherwise limit the security fences of their plot Nos. to the advice of the County Environment Officer.
 7. Since parcel number Trans-Nzoia/Suwerwa/470 has already been subdivided and part of it disposed of the County Surveyor and the County Land Registrar shall, while carrying out the



boundary adjustment exercise apply the old boundaries it had before it was subdivided and that application shall be only for the purpose of resolving the dispute between the plaintiffs and the defendants and therefore the dimensions and boundaries of plot number Trans-Nzoia/Suwerwa/1356 would not be affected in the exercise.

8. A permanent injunction is hereby issued restraining the defendant, her agents or any other person claiming through her from encroaching and or in any way interfering with that land known as Trans- Nzoia/Suwerwa/471 with its boundaries as reflected that this judgment.
 9. The costs of fixing the boundaries shall be borne by both the plaintiffs and the first defendant in equal parts, save that where one party fails to pay, the other may sponsor the exercise and such costs shall be recovered from the party in default of more than 14 days after a written demand has been served on him or her, by way of execution, as would happen in respect of the costs of a suit.
 10. As there are familial bonds to be protected and preserved between the plaintiffs and the first defendant, each party shall bear its own costs of the instant suit; however, no costs of the instant suit shall be awarded to the 2nd and 3rd defendants.
2. Further, the decree was served on the County Land Registrar as required. To date, the Registrar had declined to implement the decree on the ground as decreed by the Court on 31/03/2023, hence embarrassing the court process. The Land Registrar had never given reasons for failure to implement the order, and this was extremely prejudicial to the Applicants who need to enjoy the fruits of their judgment. Failure by the Respondent to implement this integrity was unreasonable, in the circumstances and unfair and amounted to abuse and improper exercise of authority by the Respondent. It is in the interest of justice that the Application be allowed.
 3. The application was supported by the Affidavit of one Joseph Mureithi sworn on 04/03/2024. He stated that he was an adult of sound mind and annexed a copy of his Identity Card as JM1. He also annexed as JM2 a copy of the Court order dated 20/02/2024 and JM3 a copy of a Letter of Authority to Plead as given by the 2nd and 3rd applicants. He also annexed as JM4 a copy of the Grant of Letters of Administration and the Confirmation of Grant of the Estate of Ruth Muthoni Rudorot who died intestate on 20/11/2013. He repeatedly contents of the decree of the court, a copy of which he annexed as JM5. He stated that the decree was served on the County Land Registrar who acknowledged service on 19/07/2023. He annexed and marked as JM6 a copy of a letter dated 19/07/2023. His deposition was that to that date the Land Registrar had declined to implement the decree despite being served with a letter dated 02/08/2023, a copy of which he annexed as JM7. He repeated the rest of the contents of the grounds in support of his application.
 4. The application was opposed through the Replying Affidavit sworn by one Gerald Sharon, the Land Registrar, based in Trans Nzoia County. She deposed that the office had received the orders of the Court dated 17/08/2022 and 31/03/2023 in regard to the title Trans-Nzoia/Suwerwa/471 and the original land title number Trans-Nzoia/470. The Land Registrar was ordered to ascertain the correct boundaries of the land parcel number 471 and the original and number 470 which has since been divided to parcel numbers 1356 and 1357. The County Environment Officer was ordered to advise the parties appropriately regarding the occupation and use of the River Trans Nzoia wetlands for its proper protection under the law. The Court's directive was that during the Survey exercise 6.62 hectares be parceled out for each family from the upper boundary abutting the road, fronting the higher ground of the farm towards the direction of the river, while retaining the position of the current boundary, however far that boundary would go as to accommodate the acreage stated on the respective titles.



5. The Land Registrars visited the ground twice in order to implement the decree but they could not complete the exercise. Part of the decree and in particular part (d) could not be implemented as the acreage was given in acres and not hectares. A report on the same was given to Court on 22/02/2023 and the same was rectified by the Court order of that 31/03/2023.
6. Further, the Court was informed that the actual ground acreage measuring 12.78 hectares was less than the registered acreage measuring 13.24 hectares. During the visit there were officers of both the National Environment Management Authority (NEMA) and Water Resources management Authority (WARMA) to ascertain the riparian land, which they did, and the same was mapped out and marked. The parties were advised on how to deal with the riparian land, and informed they could not till it howsoever except plant trees and particularly not blue gum ones.
7. At paragraph 12 the Land Registrar deposes that the Office revisited the ground on 27/07/2023 in a bid to implement the court order and especially the beacons as the main survey exercise was done during the first visit but they met with difficulty. The Applicants were resistant and insisted on being shown their riparian land and it be left up to them to decide what to do with it. The Applicants also alleged that they did not see the NEMA and WARMA officials during the first visit. Further, they Applicants, on the date of second visit, insisted that they had been informed by their advocates that the court decree specifically stated that each party be given their riparian land. With that they became hostile and refused to have the exercise continue until the court decree was explained to them as well, resulting in an exercise in futility. Again, the parties insisted that they were okay with their parcels as they currently sat, their boundaries and acreages.
8. Further, the Applicants' issue was with the riparian land which according to the Lands Office it was not up for discussion as the riparian land remained to be public land. She deposed that the exercise was suspended and parties were informed that they seek further advice from their advocates as to what the decree meant and whether they could have the court visit the ground to appreciate the reality. The deponent annexed a copy of the site visit report dated 21/02/2024 and filed in court on 22/02/2024. She deposed that the parties had been advised by the Land Registrar to maintain the status quo and live amicably until the Land Registrar's Office visited the ground again to put the beacons and finish the exercise remaining.
9. The application was disposed of by way of written submissions. The Applicants filed their written submissions dated 22/07/2024 and the Respondent filed its dated 19/04/2024. This Court has considered the submissions extensively and has applied the arguments therein in the analysis below.
10. Having considered the application, the law and the rivals' submissions. Two issues comment themselves for determination before this court. One is whether the application is merited, and two who to bear the costs of the Application.
11. The first relief that was granted by the Honorable Court in Kitale ELC No. 128 of 2016, was that the National Environment Management Authority (NEMA) and the Transient Nzoia County Environment Officer be enjoined to the instant suit. It is clear from the relief granted that the learned trial Judge was of the view that the exercise would not be conducted effectively without the involvement and input of the two government departments for reason of environmental protection and conservation issues to be catered for in the re-parcellation of the land. That was why the Court directed the County Land Registrar Trans Nzoia County and Trans Nzoia County Environment Officer to visit the suit land and fix beacons appropriately.



12. I have carefully considered the Application herein, especially the reasons given by the Applicants for the Judicial Review Application. I have also considered the response by the Land Registrar, Trans Nzoia County. I have carefully analyzed the annexures to the instant application in support of the same.
13. This is an Application which I do not hesitate to say that it must fail, and I do so for a number of reasons which I will explain hereunder. But before I do so, I need to point out at this juncture that the Applicants want to steal a match against their own: one Nancy Ruiru Rudorot.
14. First of all, is sad, and this Court finds, that the Applicants have not been candid to it. It is trite law that the reliefs sought herein are discretionary, and therefore he who comes to equity must come with clean hands. The Applicants moved this court contending that the Land Registrar failed to implement its decree, made in the Kitale ELC No. 128 of 2016. They did not, whether in the Verifying Affidavit or in the Facts verified, disclose whatsoever that the Land Registrar had visited the parcels of land on two occasions after the issuance of the decree on 31/03/2023. Indeed, the Land Registrar swore an Affidavit to say that on two different occasions their office, in the company of the officers from NEMA and WARMA visited the land, but they met resistance from the Applicants. The Applicants did not swear any Supplementary Affidavit to deny or refute this important fact revealed by the Land Registrar. It means that indeed, the Land Registrar gave the proper information regarding the 'inaction' complained about: that it actually was not inaction. It was incumbent on the part of the Applicants to disclose to the court that on such an occasion visits had been made. Such failure to disclose such a material fact deprives the Applicants of the discretion of the court. It shows that they were intent to lie to the court for their own benefit. This Court is convinced that the Respondents visited the land twice for purposes of implementing the decree but for one reason or another, orchestrated by the Applicants, they did not implement the decree. Failure to disclose such important material facts can only point to a deliberate attempt to mislead this court to issue orders, for them to misuse and hence abuse the process of the court. The Applicants cannot have their cake and eat it. They cannot be heard to frustrate a lawful process for greed and move the Court for these orders. I say that it is for greed given that the Land Registrar deposed that the Applicants insisted that the riparian land should be left for them to use it the way they decide. If that is the case, then it is not only greed but absurd. Riparian land is government land. This mentality of parties taking advantage of the use of government land for private purposes, whether it abuts their private property or not should stop forthwith and if not, firm action be taken against perpetrators of such crimes. They are a danger to the environment!
15. Furthermore, I have looked at the annexure, marked JM-4 being a decree given by this Court on 17/08/2022 in Kitale ELC No. 2016 and issued on 31/03/2023. It is clear from the heading that there are three Defendants in the matter. These are, Nancy Ruiru Rudorot, National Environment Management Authority, and Trans Nzoia County Environment Officer. They are listed as Defendants in the matter where the Applicants were Plaintiffs.
16. It is plain that the instant Application leaves out parties who are listed in the annexure JM-4 whom the orders sought herein would affect once granted. This in my humble view is a deliberate omission from these judicial review proceedings. These, in particular, are all the Defendants in Kitale ELC No. 128 of 2016 which gave rise to the intended enforcement of the decree through the orders of judicial review sought herein, although they were necessary parties. For instance, the Applicants do not explain why Nancy Ruiru Rudorot who the judgment describes as a relative of the Applicants has been left out, yet she actively participated in the proceedings leading to the judgment and decree sought to be enforced by way of mandamus.
17. In my humble view, the omission of such a necessary party can only lead this court to draw an inference of mischief and bad faith on the part of the Applicants, and an intention to lock out important



- and necessary parties from giving an input in pertinent issues. This may explain why the Applicants deliberately chose not to inform the Court that the Land Registrar and other officials had visited the suit land to implement the decree but for one reason or other, which has now been sufficiently explained by the Land Registrar, did not come to fruition.
18. Moreover, the contents in the Verifying Affidavit of the Applicants made this Court to call for and examine the record in Kitale ELC No. 128 of 2016. The examination of the record revealed the following: that on 20/03/2023 the Applicants moved the court in the matter to amend the Decree given on 17/08/2022 to reflect the sizes of the suit parcels of land in terms of hectares rather than acres. That happened by the order of the Court, issued on 31/03/2023, following the proceedings of 27/03/2023, when the Respondent in the matter, one Nancy Ruiru Rudorot did not oppose the application. The record shows further that on 15/05/2023 the Land Registrar wrote to the Court to authenticate the decree for purposes of registration. On 17/05/2023 the Deputy Registrar wrote, authenticating the decree. Thereafter there is nothing on the record to show that any action has ever been taken by the Applicants or other persons regarding the decree.
 19. The record shows further that from the time the Judgment was delivered on the 17/05/2023 there are no pleadings filed in the suit to confirm that indeed the decree was given effect, particularly, that the NEAM and the Trans Nzoia County Environment Officer were joined to the matter as the 2nd and 3rd Defendants respectively. All that the record shows are that the Applicants extracted a decree on 27/09/2022, which decree included the parties, NEMA and Trans Nzoia County Environment Officer as the 2nd and 3rd defendants respectively.
 20. First of all, the parties used the wrong procedure to extract such a decree: the pleadings were never amended. Thus, the decree was defective, wrong and should be returned to this Court, in the parent filed for destruction. It is null and of no effect. Secondly, there is no evidence whatsoever that the two parties have ever been served the decree or ever been included in the proceedings as parties as ordered by the Court. Therefore, for the Applicants to move this Court to the exclusion of the said necessary parties can only show that indeed they have never been included in the proceedings as ordered, and that any purported execution of the decree without involving them is null and void. No wonder some parties want to claim riparian land as theirs, as the Land Registrar deponed they indicated when they became hostile to the officers.
 21. Additionally, for an order of mandamus to be issued, there has to be evidence that there is inaction on the part of the officers whose conduct is to be reviewed by the Court. Herein there is no inaction but action on two occasions. There is no evidence to show that the Applicants made any efforts to involve all the parties in the process of execution of the decree.
 22. Turning to the merits of the instant application, the applicants seek an order of mandamus to compel Land Registrar Trans Nzoia County to implement the decree. An order of mandamus cannot be issued to compel a public officer to act in a certain manner or have a specific outcome. Otherwise, that would deprive the said officer of the discretion they have under the law to exercise.
 23. Furthermore, if indeed, the officers did not act in Kitale ELC No. 128 of 2016, it was incumbent for the Applicants to move the Court in the said matter, for appropriate orders.
 24. The upshot is that the Application herein is without merit. It is hereby dismissed with costs to the Respondent.
 25. The Deputy Registrar of the Court is directed to forward a copy of this Judgment to M/S. Kiarie & Company Advocates who represent Nancy Ruiru Rudorot, in Kitale ELC. No. 128 of 2016, and the



National Environmental Management Authority, Trans Nzoia County and the Trans Nzoia County Environment Officer, against whom the applicants wanted to steal a match against.

26. The file to be closed forthwith.

**JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA THE TEAMS PLATFORM
THIS 5TH DAY OF NOVEMBER 2024.**

HON. DR. IUR F. NYAGAKA

JUDGE, ELC KITALE

In the presence of:

M. W. Odongo Senior State Counsel for the Respondent

