



**Oruoba v Korinko (Environment & Land Case 25 of 2016)
[2023] KEELC 16021 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16021 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 25 OF 2016**

M SILA, J

MARCH 9, 2023

BETWEEN

RICHARD NYAMAO ORUOBA PLAINTIFF

AND

JOHN KIRANGAS KORINKO DEFENDANT

RULING

1. The application before me is that dated 12 May 2022 filed by the plaintiff. It seeks the following orders (paraphrased for brevity):-
 1. Spent (certification of urgency).
 2. That the court be pleased to issue an order compelling the defendant to sign and execute all documents necessary to effect transfer of the land parcel Transmara/Moyoi/168 to the plaintiff.
 3. That the court do order that the Deputy Registrar signs and executes, on behalf of the defendant, the documents necessary to effect transfer of the land parcel Transmara/Moyoi/168 to the plaintiff.
 4. That the court do order the Land Registrar, Transmara to rectify the register and register the plaintiff as proprietor of the land parcel Transmara/Moyoi/168.
 5. That the court do issue an order directing the Land Registrar, Transmara to issue a new title deed to the land parcel Transmara/Moyoi/168 to the plaintiff.
 6. That the court do order eviction of the defendant and his agents/family members from the land parcel Transmara/Moyoi/168.



7. That the OCS, Lolgorian to provide security during the exercise.
 8. That costs of the eviction and the attendant costs of this application be shouldered by the defendant.
2. The application is supported by the affidavit of the plaintiff. The application is opposed by the defendant who filed grounds of opposition. It is contended inter alia that this application is a disguise to vary the judgment of the court and is an attempt to introduce a new suit.
 3. I have gone through the record. Through a plaint filed on 29 June 2011, the plaintiff contended that he is the rightful owner of the land parcel Transmara/Moyoi/168 (hereinafter referred to as 'the suit land'). He claimed that he bought the land from the father of the defendant, one Zachary Oruoba, in the year 1976. He contended that the defendant falsified the adjudication records and obtained registration as proprietor of the suit land. In the suit, he sought a declaration that he is the rightful proprietor of the suit land and an order of eviction against the defendant. The suit was heard by Okong'o J, whose judgment was delivered on 27 June 2016. He held for the plaintiff. Specifically, he made the following final orders:-
 1. I hereby declare that the plaintiff is the lawful owner of all that parcel of land known as land parcel number Transmara/Moyoi/168 and that the title held by the defendant in respect of the said property was acquired fraudulently.
 2. The defendant his agents and/or servants shall vacate and hand over to the plaintiff possession of the said land parcel number Transmara/Moyoi/168 within ninety (90) days from the date hereof failure to which the plaintiff shall be at liberty to apply for his forceful eviction.
 3. The plaintiff shall have the costs of the suit.

It is apparent that the judgment is yet to be executed hence this application.

4. In his submissions, Mr. Ochwangi, learned counsel for the defendant, argued that the judgment did not make any express order for cancellation of title and that the order to have the Deputy Registrar sign the transfer documents ought to have been made in the plaint. He submitted that to amend the register, there must be an express order in the judgment. He also urged that the applicant cannot ask for an order of eviction when it is already in the judgment.
5. It is true that the plaint did not ask for an order of cancellation of the title of the defendant. The plaint was probably poorly drafted, for all it sought was a declaration that the plaintiff is the registered owner of the suit land. This was superfluous as the plaintiff was never the registered proprietor. The registered proprietor was the defendant and it may have been much more elegant for the plaintiff to ask for cancellation of the title of the defendant.
6. However, the court did issue an order declaring that the plaintiff is the legitimate owner of the suit land. This declaration cannot be given effect unless the title of the defendant is cancelled. The orders herein seek that transfer be effected to the plaintiff. That is also misplaced. The property is not being sold to the plaintiff. What the court found was that during adjudication, the suit land was indeed adjudicated in name of the plaintiff but the title was registered in name of the defendant. The court held that this registration was fraudulent. This was a first registration pursuant to an adjudication. What needs to happen is for the register to cancel out the name of the defendant as first proprietor, and also cancel his title deed, and in place thereof, have the name of the plaintiff registered as the first registered proprietor of the suit land. This is because the court found the title of the defendant to be fraudulent and a nullity.



It is not a title for transfer. On the issue of eviction, the court did order eviction within 90 days and it appears that the defendant is yet to vacate the land. What the defendant is doing is raising technicalities and trying to split hairs to defeat the registration of the plaintiff as title holder and also continue staying in the suit property. This cannot be allowed.

7. For the above reasons, I order as follows: -
 - i. The Land Registrar to cancel the registration of the defendant as proprietor of the land parcel Transmara/Moyoi/168 and also proceed to cancel his title deed and in place thereof insert the name of the plaintiff as the first proprietor and issue him with a title deed.
 - ii. The plaintiff is at liberty to appoint a court broker and the court bailiff and proceed to forcefully evict the defendant and all other persons on the suit land who are on it on account of the defendant.
 - iii. The OCS, Lolgorian to provide security during the eviction exercise.
 - iv. The defendant will shoulder the costs of this application and the costs of eviction.
8. Orders accordingly.

DATED AND DELIVERED THIS 9 DAY OF MARCH 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

