



REPUBLIC OF KENYA



**Lempaso & another v Bunyi & 12 others; Karogo & 5 others (Interested Parties)
(Environment & Land Case 579 of 2017) [2023] KEELC 17327 (KLR) (9 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17327 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 579 OF 2017**

MN GICHERU, J

MAY 9, 2023

BETWEEN

MOSES KIRRUTI LEMPASO 1ST PLAINTIFF

GRACE WAITHERA KIRRUTI 2ND PLAINTIFF

AND

GRACE WANGARI BUNYI 1ST DEFENDANT

OLKASASI LIMITED 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

THE LAND REGISTRAR, KAJIADO 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

PAUL GITUNGO GICHIMBA 6TH DEFENDANT

AND

JOHN MBURU KARUGA 1ST PROPOSED RESPONDENT

BERNARD M. GATHIMBA 2ND PROPOSED RESPONDENT

ANDREW DANIEL MBOGO 3RD PROPOSED RESPONDENT

SAMUEL NGIGI GITUERE 4TH PROPOSED RESPONDENT

GEORGE M. MUHORO 5TH PROPOSED RESPONDENT

LUCY WAIRIMU NJOGU 6TH PROPOSED RESPONDENT

ISAAC GATHUNGU WANJOHI 7TH PROPOSED RESPONDENT

AND

BONIFACE KAROGO INTERESTED PARTY



DICKSON NGUNJIRI INTERESTED PARTY
EXCEL MWANGI INTERESTED PARTY
NG'ANG'A GOKONYO INTERESTED PARTY
AMOS MACHARIA INTERESTED PARTY
STEVEN KIMANI INTERESTED PARTY

RULING

1. There are two pending applications in this case. The first one is dated 13/6/2022 while the second one is dated October 13, 2022. The first application seeks to join a number of new parties to the suit as Defendants. It also seeks to stay eviction of the Plaintiffs from the suit land.

The second application seeks to cite two persons who are not yet parties to this suit for contempt of an order dated 3/10/2022.
2. This suit seeks a vesting order to the effect that LR Kajiado/Ololoitikoshi/Kitengela/1957 measuring 42.0 hectares is the property of the first Plaintiff. It also seeks to have the District Land Registrar Kajiado register the first Plaintiff registered as the owner of any subdivisions of the said land.
3. On 23/6/2022, this court delivered a judgment in ELC Case No 575 of 2017 where the parties were Grace Wangari Bunyi as Plaintiff and Moses Kirruti Lepas, Grace Waithera Gichuhi, Ng'ang'a Gikonyo and Stephen Njuguna as Defendants. In that case, this court held as follows.

“On the second issue, I find that LR No Kajiado/Kitengela/1957 does not exist. This is because it was partitioned after the Purka Land Control Board gave its consent on 14/11/1989. This was implemented and on December 23, 2003 it gave rise to LR 12922 and 12923”.
4. This court having made a decision regarding the suit land in ELC No 575 of 2017 cannot again be called upon to deal with the same issues. The main parties in this case namely Moses Kirruti, Grace Waithira Gichuhi and Obadiah K. Bunyi were also the main parties in Case No 575 of 2017. More importantly, the suit land is Kajiado/Kitengela/1957 and it is the subject matter in both suits.

In Case No 575 of 2017, this court held this say in the judgment.

“From the case number, it would seem that case Number 579 of 2017 was filed after this case. If that is the case, why did the Defendants not disclose that there was a parallel suit over the same subject matter and between the same parties? Why did they not seek to consolidate it with this suit? It was upon them to do this and they failed in their duty”.
5. Order 4, rule 1(f) *Civil Procedure Rules* makes it mandatory for parties to disclose any previous proceedings over the same subject matter between the same parties. The reason for this is to avoid a multiplicity of suits. The more the suits, the higher the possibility of conflicting decisions by the courts, the greater the expense and the longer the delay in concluding the suits.
6. This particular dispute has been pending for many years. There was Criminal Case No 460 of 1997 at Kajiado SRM's Court, HCCC 4861 of 1989 (Nairobi), Tribunal Case 69 of 2009 at SRM's Court Kajiado, Kajiado Land Dispute Tribunal Case No 487/2008, Land Dispute Appeal No 5/2010, HCCC 235/2010 at Machakos and Miscellaneous Application No 167 of 2011 (Machakos High



Court). There could be other cases. In all these cases, Moses Kirruti Lempaso and Grace Waithira Kirruti or Grace Waithera Gichuhi have been key actors.

7. In ELC 575 of 2017, which was decided almost a year ago, there is an application coming up 30/5/2023 which seeks to set aside the judgment and decree therein. Twenty six years since litigation over LR 1957 started, it seems that we are still at the beginning and the end of litigation is far away.
8. Article 159 of the *Constitution of Kenya* provides that justice shall not be delayed. Section 3 of the *Environment and Land Court Act* provides that land cases be heard in a just and expeditious manner. Section 1A (3) of the *Civil Procedure Act* requires parties to a suit and their advocates to assist the court to further the overriding objective of the Act which is to ensure a just, expeditious, proportionate and affordable resolution of civil dispute.
9. From the look of things, the biggest cause of delay in this dispute is a multiplicity of suits over LR Kajiado/Kitengela/1957.

I find that the decision of this court made on June 23, 2017 in ELC 575 of 2017 applies in this case. In effect the two pending applications are dismissed. Any party dissatisfied with this decision has a right appeal with effect from today's date.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9TH DAY OF MAY, 2023.

M.N. GICHERU

JUDGE

