



**Sikanga v Samuel (Environment & Land Case 171 of 2013)
[2023] KEELC 18754 (KLR) (11 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18754 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 171 OF 2013
EC CHERONO, J
JULY 11, 2023**

BETWEEN

NELSON KAKAI SIKANGA PLAINTIFF

AND

SIRENGO MOHAMMED SAMUEL DEFENDANT

RULING

1. Vide a notice of motion application under certificate of urgency dated November 7, 2022, the plaintiff/ applicant seeks the following orders;
 1. (Spent)
 2. That the Court Bailiff Bungoma be and is hereby ordered to implement Eviction as decreed herein the Judgment debtor unwilling to abide by the court orders.
 3. That the O.C.S Webuye Police Station be and is hereby ordered to provide security during implementation of the decree herein.
 4. (spent)
 5. That the costs of this application be provided for.
2. The application is premised on grounds apparent on the face of the said application supported by the affidavit of the applicant sworn the same date.
3. The application is opposed by the Respondent who filed a replying affidavit sworn on November 22, 2022. When the application came up for directions on 22nd March 2023, the parties agreed to dispose of the same by way of written submissions.
4. The respondent through the firm of M/S J.W Sichangi & Company Advocates filed his submissions on March 28, 2023 while the Respondent acting in person filed his on 13th April 2023.



5. In his supporting affidavit, the applicant stated that this matter was concluded vide a judgment delivered on 12/11/2020 and the defendant/respondent herein was directed to remove any structures or property that he had erected. He also stated that this Honourable court also granted an injunction restraining the defendant, his family, relatives, agents or servant from erecting structures or cultivating on the disputed area or plot.
6. He further deposed that despite the judgment and decree of this court, the respondent has continued with activities on the said parcel by erecting new structures digging a borehole and fencing. He further averred that they do not share a common boundary with the defendant/respondent but there is a five (5) metre access road leading to land parcel No. Ndivisi/Mihuu/3011 which is legal as per [land Act](#) regulatory registry index map sketch 3.
7. The plaintiff/applicant also deposed that the county Surveyor/Land Registrar misused their office powers by going against court orders to dispute mutation numbers -0389158 registered earlier than others for the sake of the respondent registry index map sheet 3. The applicant further deposed that the order issued directing the land Registrar and the Land Surveyor were directed to re-establish the boundary between the land parcels No. Ndivisi/Mihuu/2157 and No. Ndivisi/Mihuu/3011 to re-open the access road to land parcel No. Ndivisi/Mihuu/3011 but instead redrew a new map annexing thereby misleading this Honourable court. The applicant also stated that the said new map drawn by the Land Registrar and the land Surveyor caused to be reduced plot No. Ndivisi/Mihuu/2157 from 0.04 Ha(18x23) to 0.02Ha (9x23) m without a court order. He averred that the said Land Registrar and Land Surveyor blocked access road to land parcel No. Ndivisi/Mihuu/3011 registry index map sheet No. 3 against [Land Registration Act](#) and further advised the plaintiff to amalgamate the three plots and created a common boundary against Surveyor Regulatory Act.
8. The respondent in his replying affidavit stated that the applicant is aware that the purported access road that was in the proceedings is within the applicant's plot and not in his plot. He stated that the alleged access road has never been existing on the ground but was initially serving a plot he bought and later amalgamated and that nobody has encroached on it.

Analysis And Decision

9. I have considered the notice of motion application dated 7/11/2022, the supporting affidavit of the applicant, the replying affidavit and the rival submissions. I have also considered the pleadings and proceedings in this case. What the applicant seeks in this application is to implement the judgment/decree of this Honourable court issued on November 12, 2020.
10. From his plaint dated June 10, 2013, the plaintiff had sought judgment for order as follows;
 - (a) Eviction orders to remove the defendant, his family, relatives and property from the plaintiff's Land parcel No. Ndivisi/Mihuu/2157
 - (b) A permanent injunction restraining the defendant, his servants, agents or anyone claiming through them from entering, trespassing into, erecting structures or cultivating or in any way interfering with the Land parcel No. Ndivisi/Mihuu/2157.
 - (c) Costs of the suit.
 - (d) Interest
11. In the judgment/decree delivered on 12/11/2020, this Honourable court rendered itself as follows;



1. An order is issued directed at the defendant, his family and relatives to remove any structure or property that has encroached onto the access road leading to land parcel No. Ndivisi/Mihuu/3011 within three (3) months from the date of this judgment
2. Thereafter, the Land Registrar and Land Surveyor Bungoma shall re-establish the boundary between the Land parcels No. Ndivisi/Mihuu/2157 and Ndivisi/Mihuu/3049 to re-open the access road to land parcel No. Ndivisi/Mihuu/3011
3. In default of (1) above, the defendant, his family, relatives, agents, or servants shall be evicted from the access road leading to parcel No. Ndivisi/Mihuu/3011
4. A permanent injunction is issued restraining the defendant, his family relatives, agents or servants from erecting structures or cultivating on the access road to Land parcel No. Ndivisi/Mihuu/3011
5. The plaintiff is awarded half costs of this suit.

Looking at the judgment/decreed issued on 12/11/2020, it leaves no doubt that no definitive orders were made but the orders were subject to some future event(s). Order No.2 of the said Judgment provides as follows;

“2. Thereafter, Land Registrar and land Surveyor Bungoma shall re-establish the boundary between the Land parcels No. Ndivisi/Mihuu/2157 and Ndivisi/Mihuu/3049 to re-open the access road to Land parcel No. Ndivisi/Mihuu/3011.”

12. In my view, the Judgment of this Honourable court delivered on November 12, 2020 and the subsequent decree cannot be deemed as capable of bringing this suit to finality. The conclusion of this suit is subject to the report to be presented by the Land Registrar and the Land Surveyor.
13. In view of the matters aforementioned, I find the application dated November 7, 2022 premature. Consequently, the said application is hereby dismissed with each party to bear its own costs.

READ, DELIVERED AND SIGNED IN THE OPEN/VIRTUALLY COURT AT BUNGOMA THIS 11TH DAY OF JULY, 2023

HON. E.C. CHERONO

ELC JUDGE

In the presence of:

- 1. Mr. Bw'onchiri holding brief for Sichangi for defendant**
- 2. Plaintiff-present**
- 3. Joy- Court Assistant-present**

