



**Likam (Suing as the Personal Representative of the Estate of Sangale Ole Langas Deceased) v Mishish & another (Environment & Land Case 881 of 2017) [2023] KEELC 19831 (KLR) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19831 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 881 OF 2017  
MN GICHERU, J  
SEPTEMBER 19, 2023**

**BETWEEN**

**JOSEPH LIKAM (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SANGALE OLE LANGAS DECEASED) ..... PLAINTIFF**

**AND**

**STEPHEN MISHISH ..... 1<sup>ST</sup> DEFENDANT**

**GEORGE MISHISH ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated June 2, 2022. The motion which is by the Plaintiff/Applicant seeks two main orders as follows.
  - i. An order of removal of the Defendants, their relatives, servants, agents and anybody claiming through them from Kajiado/Olchoro-Onyore/9183 in terms of the judgment and the decree of this court dated July 12, 2018.
  - ii. An order directing the officer commanding Kiserian Police Station to ensure compliance of order (1) above.
  - iii. That the costs of this application be borne by the Respondent.
2. The motion which is brought under Orders 22 Rules 29 and 82, 51 Rules 1 and 3 of the *Civil Procedure Rules*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Article 159 of the *Constitution* and all other enabling provisions of the law is supported by five grounds, a supporting affidavit of the Plaintiff and four annexures which include a copy of the limited granted dated July 30, 2021 issued in Ad Litem Cause No. E056 of 2021, copy of title deed for LR KJD/Olchoro Onyore/9183, copy of judgment dated July 12, 2018 and a copy of decree dated March 7, 2019.



3. The gist of all the material filed by the Applicant in support of the motion is as follows.
- Firstly, the Plaintiff's father Sangale Ole Langas is the registered owner of the suit land.
- Secondly, the judgment and decree mentioned above ordered that the Defendants be restrained from trespassing on the suit land.
- Thirdly, the Defendants have obstructed and resisted the Plaintiff's efforts to occupy the suit property.
- Fourthly, and for the above stated reasons, only the orders sought will ensure that the Plaintiff enjoys the fruits of his judgment and that justice is served.
4. The application is opposed by the Respondents and the first Respondent Stephen Mishish has sworn a replying affidavit dated November 28, 2022. In the reply he deposes that the area alleged to have been encroached is comprised in title numbers 11235 which belongs to third parties, that is to say, Vincent Onserio Mose and Hesbon Momanyi Mose who are the current proprietors of valid title to their land.
- Secondly, the two proprietors of LR 11235 have never been parties to this suit yet the orders made herein will affect their ownership and occupation of their land.
- Thirdly, the disputed area comprised in title number 11235 does not border the Plaintiffs property but borders parcel No 173 which belongs to other third parties who are already registered owners of those parcels.
- Fourthly, the orders sought will result in the eviction of innocent parties who have not been heard and this will derogate the rules of nature justice and the right to a fair hearing enshrined in Article 50 (1) of the *Constitution*.
- Finally, there exists uncertainty as to the orders of the court because the District Land Surveyor was directed to fix the boundaries between the original parcels number Kajiado/Olchoro-Onyore 16 and 19 which directions have not been complied with.
- For the above reasons, the motion should be dismissed as granting it would result in a grave injustice.
5. I have carefully considered the motion in its entirety including the affidavits, the annexures and the entire record. I find the following issues arise.
- i. Whether there could possibly be third parties lawfully occupying the Plaintiffs land other than the Defendants?
  - ii. Whether there is any ambiguity in the judgment dated July 12, 2018?
  - iii. Whether the Defendants have shown any cause as to why they should not be evicted from the suit land?
6. On the first issue, I find the judgment dated July 12, 2018 binds not only the Defendants but anyone claiming through them. It provides as follows in paragraph (b),
- “A permanent injunction be and is hereby issued restraining the Defendants either by themselves, their agents and or servants from harassing, trespassing upon, or in any manner whatsoever interfering with the Plaintiffs property known as title number Kajiado/Olchoro – Onyore/9183”.
- The so called third parties and innocent purchasers should have joined the suit while it was pending. They did not do so and since they have no privity of contract with the Plaintiff, they should claim



their land from the person who may have sold them land which belonged to the Plaintiff. These other parties must suffer the same fate as the Defendants as per the above findings.

7. On the second issue, I find no ambiguity in judgment dated July 12, 2018. The Plaintiff in the plaint dated April 16, 2014 sought four prayers all of which were granted in the judgement of July 12, 2018. There was no prayer for a second demarcation of the boundary. The court accepted that the boundary was determined *vide* a report of the Land Registrar dated July 11, 1990. The judgement reads as follows at page 13 line 9;

“...it is against the foregoing that I find that the defendants have indeed encroached on the suit land and direct that they be permanently restrained from encroaching on the Plaintiff’s land parcel no. Kajiado/Olchoro-Onyore/9183 which was a resultant subdivision from Kajiado/Olchoro-Onyore/16...”

The court did not leave any doubt as to what was to happen as far as the Defendants and those claiming under them were concerned. They were to be restrained from the suit land. If any action was pending, it was not on the part of the court but on that of the Land Registrar. There is no explanation by the Defendants why it has taken more than four (4) years to implement the court’s decision.

8. On the final issue, I find that the Defendants have not shown any cause as why they should not be evicted from the suit land. They have not appealed against the judgement dated July 12, 2018 more than five years down the line. They have not sought a stay of execution of the decree of the court. In short, there is nothing pending. There being nothing pending, there is nothing to stop the implementation of the decree.

If the Defendants and their agents were acting in good faith, they would have vacated the suit land voluntarily. Since they have not done so, they must be evicted by force.

For the above stated reasons, I allow the notice of motion dated June 2, 2022 with costs to the applicants.

It is so ordered.

**DATED,SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF SEPTEMBER, 2023.**

**M.N. GICHERU**

**JUDGE**

