



REPUBLIC OF KENYA



**Thuo (Suing as the Legal Representative of the Estate of Mbugua Thuo) v Muhoro & 16 others (Environment & Land Case 117 of 2019)
[2023] KEELC 21337 (KLR) (7 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21337 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 117 OF 2019
MAO ODENY, J
NOVEMBER 7, 2023**

BETWEEN

ELIUD MBUGUA THUO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MBUGUA THUO) PLAINTIFF

AND

JOSEPHAT MWANGI MUHORO 1ST DEFENDANT
SAMEL NJOGU MUNGAI 2ND DEFENDANT
JOSEPH MWEMA NGANGA 3RD DEFENDANT
CHRISTOPHER KARIUKI KAMAU 4TH DEFENDANT
JOSEPH CHEGE NDUGUGA 5TH DEFENDANT
WANJIKU GATHORONJO 6TH DEFENDANT
JACKSON MIRINGU KAMAU 7TH DEFENDANT
DORIS NYAIRURI NJIRI 8TH DEFENDANT
FRANCIS NGUGI MUNGAI 9TH DEFENDANT
DELIVERANCE CHURCH (SUED THROUGH ITS REGISTERED TRUSTEES) 10TH DEFENDANT
TAYARI FARMERS CO. LTD 11TH DEFENDANT
JOSEPH KIRAGU MURAYA 12TH DEFENDANT
MARY MUTHONI KARIUKI 13TH DEFENDANT
ESTHER WANGARI NDEGWA 14TH DEFENDANT
CHARITY NJERI MWANGI 15TH DEFENDANT



MICHAEL WAWERU MWANGI 16TH DEFENDANT
THE REGISTERED TRUSTEES MOLO STREET CHILDREN
PROJECT 17TH DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 20th April 2023 by the 12th defendant/applicant seeking the following orders:
 - a. Spent
 - b. The Honorable court be pleased to set aside the orders issued on 22nd March 2023 allowing restrictive orders against the defendants.
 - c. The Honorable court be pleased to uphold the orders issued by the Court of Appeal by consent on 25th April 2016.
 - d. The Honorable court be pleased to issue such further or other orders as it may deem just and expedient for the ends of justice.
2. The application was supported by the annexed affidavit of Joseph Kiragu Muraya sworn on 19th April 2023 where he deponed that on 23rd March 2023 the court allowed prayer 2 and 3 of the plaintiff/respondent's application dated 7th February 2023.
3. The Applicant further stated that prayer 3 sought for restriction orders against the defendants but there was an order from the Court of Appeal dated 25th April 2016 which was granted by the consent of all the parties whereby the status quo was specifically defined and stated that the defendants would not dispose or alienate the suit property pending the determination of the suit.
4. The Applicant also stated that the plaintiff/respondent did not seek to set aside the orders of the superior court before filing the application dated 7th February 2023. Further that the plaintiff/respondent will not be prejudiced in any way if the orders sought are granted.
5. The plaintiff/respondent filed a replying affidavit on 18th May 2023 and deponed that he had filed the application dated 7th February 2023 which was opposed by the Attorney General and the 3rd, 4th & 10th defendants. That the 12th defendant/applicant did not oppose the said application and that the orders granted by the court do not in any way contradict the Court of Appeal's order of status quo.
6. He further deponed that the orders issued by the Court of Appeal on 25th April 2016 and the orders of this court issued on 13th April 2023 are not in conflict but supplement each other. That the orders of the Court of Appeal affected seven parcels of land while the orders issued by this court affected thirty-one parcels of land.
7. The court directed that parties file submissions but only the 12th defendant/applicant filed his submissions on 24th May 2023.

12th Defendant's Submissions

8. The 12th defendant/applicant submitted that the parties in the suit recorded a consent before the Court of Appeal to the effect that the status quo be maintained and it fully determined the question of interim orders pending the hearing and determination of the suit.



9. The 12th defendant/applicant relied on Section 7 of the Civil Procedure Rules, the case of *Kennedy Mokuia Ongiri v John Nyasende Mosioma & Florence Nyamoita Nyasende [2022]* eKLR and submitted that it is only fair and just that the court allows the orders sought in the application.

Analysis And Determination

10. The issue for determination is whether the Applicant has made a case for setting aside the orders of this court issued on 22nd March 2023 and uphold the Court of Appeal orders of 25th April 2016.
11. It should be noted that when the application that culminated into an order dated 22nd March 2023 was heard and the Applicant herein was present but did not oppose the application. The application was opposed by the Attorney General, the 3rd 4th and 10th Defendants.
12. The 12th defendant/applicant is seeking that the court sets aside the orders made on 22nd March 2023 which orders were as follows:
- a. That the Registrar of Lands Nakuru be and is hereby compelled to provide the current register of land parcel numbers Mau Summit/Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1603, 1604, 1594, 1593, 1592, 1591, 1590, 1589, 1588, 1587, 1381, 1380, 1379, 1322, 1585, 1584, 1583, 1582, 1581, 1580, 1579, 1578, 1577, 1586.
 - b. That an order of restriction against parcel numbers Mau Summit/Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1603, 1604, 1594, 1593, 1592, 1591, 1590, 1589, 1588, 1587, 1381, 1380, 1379, 1322, 1585, 1584, 1583, 1582, 1581, 1580, 1579, 1578, 1577, 1586, either from the alleged owners themselves, their agents, assignees or any other persons working under their instructions, until the matter is heard and determined.
 - c. That certified copies of the documents be filed by the Land Registrar within 14 days. Applicant shall serve the order forthwith and file an affidavit of service to demonstrate compliance.
 - d. That suit shall be mentioned on the 26th day of April 2023 for further directions.
13. The Court of Appeal orders that were issued on 25th April 2016 that the 12th defendant/applicant is seeking that they be upheld were as follows:
- “upon application by Mr. Mwangi, the learned counsel for the applicant, and his learned counterparts Mr Mbugua and Mr Simiyu for various respondents not objecting, the motion dated 5th November 2014 be and is hereby marked as withdrawn under Rule 52 of the Court of Appeal Rules with no order as to costs.”
14. It is evident that the Court of Appeal orders issued on 25th April 2016 that the 12th defendant/applicant is seeking to be upheld were orders that marked the application dated 5th November 2014 as withdrawn. The 12th defendant/applicant also annexed to his application a consent order recorded in the present matter on 25th April 2016 which was as follows:
- a. That the status quo prevailing on title numbers Mau Summit/Molo Block 7/1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1160 and 1403 be maintained pending the hearing and final determination of this suit.
 - b. That status quo is hereby defined that the respondents, their agents and/or employees should not dispose and or in any way whatsoever alienate the aforesaid suit properties pending the hearing and determination of the suit.



15. It is important to point out that the orders issued by the Court of Appeal and the consent order issued in the present matter were both issued on 25th April 2016. As pointed out before, the 12th defendant/ applicant was seeking to enforce the orders issued by the Court of Appeal on 25th April 2016 that marked the application dated 5th November 2014 as withdrawn and not the consent order in this case.
16. The consent order dated 25th April 2016 in the present case involved fewer parcels of land than the order the applicant seeks to set aside. The order also has other directives to the Land Registrar and the hearing of the suit. The Applicant has not met the threshold for setting aside orders. No proper reason has been advanced by the applicant to warrant setting aside of the orders. The application is disguised as one for setting aside but essentially, it should have been a review application. Even if the applicant had brought the application for review, he could not have met the threshold for review as stipulated under Order 45 and Section 80 of the *Civil Procedure Act*.
17. Consequently, I find that the application lacks merit and is therefore dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 7TH DAY OF NOVEMBER 2023.

M. A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules

