



**Mukunya v Mukunya & 2 others (Environment & Land Case
E238 of 2021) [2022] KEELC 2859 (KLR) (7 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2859 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E238 OF 2021**

LN MBUGUA, J

JULY 7, 2022

BETWEEN

EMMA WAIRIMU MUKUNYA PLAINTIFF

AND

BENSON MUGO MUKUNYA 1ST DEFENDANT

ZABRON WAHENYA MWANGI 2ND DEFENDANT

JOSEPH KABUGI KARANJA 3RD DEFENDANT

RULING

1. Before me is a Notice of Motion Application dated 16.12.2021 in which the applicant seeks the following orders:
 - i. That the application be certified urgent and be heard in the first instance.
 - ii. That this Honorable court be pleased to stay orders emanating from the application ELC No. 1289 of 2014 dated 29th October 2019 issued by Hon. Justice Lucy Mbugua on date 10th November 2021 pending determination of this application.
 - iii. That the 3rd Respondent and/or his agents be barred from accessing and /or interfering with the Applicants Title No. LOC. 16/Kimandi-wanyaga/1262 pending hearing and determination of this application.
 - iv. That in the alternative to (“2” and “3”) above and without prejudice this court be pleased to vacate and/or vary orders emanating from the application ELC No. 1289 of 2014 dated 29th October 2019 issued by Hon. Justice Lucy Mbugua on date 10th November 2021 so that Applicant may be allowed to defend her rights over all property constituting Title NO. LOC. 16/Kimandi-wanyaga/1262.



- v. That courts do make any other orders it deems just to grant.
- vi. That costs of this application be in cause.
2. The application is premised on the grounds on the face of the application and the supporting affidavit of the applicant.
3. The applicant contends, that she bought 1.588 acres out of land parcel No. Kimandi-Wanyaga /775 from 1st & 2nd Respondents who did not disclose to her about litigation in ELC No 1289 of 2014 involving 3rd Respondent. She contends that parcel 775 was subdivided and she became the registered owner of parcel Loc 16/ Kimandi-Wanyaga /1262.
4. That Sometime on 10.11.2021, she came to learn that a third party was claiming ownership over a portion of her land, and that orders had been sought in ELC 1289/2014 to have her title revoked. She further states that the orders sought in ELC 1289/2014 have the effect of forcefully taking away her rights to the suit property. Thus unless the proceedings in ELC 1289 of 2014 are stayed, she will suffer substantial loss as she stands to lose her property.
5. The 1st and 2nd Respondents are not opposing the application while the 3rd Respondent has not responded to the same.
6. Should the court proceed to allow the application seeing that the same is unopposed?. In the Supreme Court of Kenya case of *Tullow Oil PLC & 3 others v PS Ministry of Energy & 15 others* [2020] eKLR, the court had this to say in regard to an application which was not opposed;

“In other circumstances, depending on its nature, where an application is unopposed, and the Court sees merit in it, then it should be granted without much ado. Not the present Motion as the same is fraught with all manner of difficulties”.
7. Stiiil, in another Supreme Court of Kenya case of *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR, the court stated that;

“Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Cour to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.
8. Guided by the above case law, I find that this court has a duty to look into the merits of the current application, even if the same is unopposed, noting that the same is fraught with all manner of difficulties including but not limited to past litigation forums.
9. In *Ezekiel Mule Musembi v H. Young & Company (E.A) Limited* [2019] eKLR, the case of in Re Global Tours & Travel Ltd HCWC No. 43 of 2000 was cited where Ringera, J (as he then was) held that:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order.”



10. I have keenly perused the record in ELC No. 1289 of 2014. This court (Judge Eboso sitting) had on 20.5.2019 marked the file as closed following a consent order recorded in court in which the defendants there in (Benson Mugo Mukunya, Joyce Wambui Langat and Milkah Kanene Ndungu) had agreed to transfer 3 acres out of land No. Loc 16/Kimandi – Wanyaga / 775 to Joseph Kabugi Karanja.
11. That consent order amounts to a consent judgment which has not been stayed through an appeal or review. It follows that there is no suit in ELC No. 1289/14 to be stayed. The current status in the said case is that there are on going execution proceedings geared towards effectuating the consent order, in which the Respondents in that suit have already been found to be in contempt of court orders.
12. It is also noted that vide the court’s ruling of 10.11.2021 in ELC no. 1289/2014, this court already gave an order for nullification of the subdivision of parcel 16/Kimandi – Wanyaga / 775.
13. In light of the foregoing, the orders sought in the current application are inconsistent with orders that are subsisting in ELC No. 1289 of 2014. In the circumstances, the application dated 16.12.2021 is dismissed with no orders as the costs.
14. In light of the analysis given appertaining to the status of the suit ELC NO. 1289/14, this court will not be able to deal with the current file No. ELC NO. E238/2021. I therefore proceed to recuse myself from handing the current matter no. E238 OF 2021.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF JULY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Maina for the Plaintiff/Applicant

Court Assistant: Edde

