



Insurance Limited Company v Chief Land Registrar & another; Mugambi & another (Interested Parties) (Environment & Land Miscellaneous Case 34 of 2017) [2022] KEELC 14666 (KLR) (8 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14666 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND MISCELLANEOUS CASE 34 OF 2017
MN GICHERU, J
NOVEMBER 8, 2022**

BETWEEN

INSURANCE LIMITED COMPANY APPLICANT

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

DISTRICT LAND REGISTRAR, KAJIADO 2ND RESPONDENT

AND

JUDITH WAMBUI MUGAMBI INTERESTED PARTY

SILVESTER GATHUKU MUIGAI INTERESTED PARTY

RULING

1. Policy Holder Compensation Fund, the applicant, herein seeks the following orders against the Chief Land Registrar and the District Land Registrar Kajiado, the Respondent.
 - (a) An inhibitory order restraining the respondents either by themselves, their officers, employees, servants and or agents or otherwise howsoever from registration of any dealings, surveying, subdividing, allocating, issuing any letters of allotment or title deeds against the whole or any portion derived from, excised from, and or subdivided from all those parcels known as Kajiado/Kisaju/59, Kajiado/Olchoro Onyore/4776 or any part of or portion thereof howsoever described or registered pending the subsistence of the moratorium declared over United Insurance Company Limited Assets.
 - (b) An inhibition order staying all and any registration of any completed and or contemplated dealings to wit, all surveys, adjudications, allocations, allotments, transfers, charges, cautions, transmissions under the Registered Land Act and any other law by the respondents in respect



of all those parcels known as Kajiado/Kisaju/59, Kajiado/Olchoro Onyore/4776 or any part or portion thereof however described or registered pending the currency of the moratorium declared over the United Insurance Company Limited Assets.

- (c) That the court issues an order compelling the respondents or any person subsequently holding those offices, to gather all the Kalamazoos, registers, folders, copies of titles, parcels of files and all other related documents to the two suit parcels above and deliver them forthwith to the Deputy Registrar of this court for safe custody or as the court may direct pending the currency of the moratorium declared over United Insurance Company Limited assets.
 - (d) Costs to be borne by the respondents.
2. The applicant has supported the said motion with twelve (12) grounds which can be summarized as follows.

The suit property has been registered in the name of United Insurance Company Limited since March 1, 1989 and August 27, 1997 respectively. In July 2005, the insurance company was placed under statutory management.

The applicant has been appointed as the statutory manager of the insurance company. The cardinal duty of the applicant as the statutory manager is to trace the assets of the insurance company, recovery of all debts and sums due and owing to the company and conducting audits of the company's accounts.

Among the assets traces as registered and owned by the insurance company are the two suit parcels. It has come to the applicant's knowledge that the respondent has allowed the subdivision of L.R. Kajiado/Kisaju/59 into two parcels namely Kajiado/ Kisaju/2792 and 2793 respectively.

This has been done without the permission, consent and authority of the Applicant. Efforts by the applicant to caution the land have been rejected by the second respondent without a good reason or justification. It is for the above reasons that the applicant seeks the four (4) orders above.
3. The motion is further supported by an affidavit sworn by Mumut Ole Sialo who used to be the statutory manager of the company before Kenya Reinsurance Corporation was replaced by the current Applicant as the statutory manager. The affidavit has several annexures which include the following.
 - (i) Two copies of the title deeds for the suit land.
 - (ii) Copy of gazette notice no. 6821 dated August, 2005 declaring a moratorium in favour of the insurance company.
 - (iii) Copy of order dated 27/10/2009 extending the moratorium named in (ii) above for a period of six (6) months.
 - (iv) Copy of order dated September 16, 2011 extending the statutory manager's mandate by 6 months.
 - (v) Copy of letter dated March 24, 2010 which shows reluctance by the Land Registrar Kajiado to caution the suit parcels.
 - (vi) Copy of letter dated July 28, 2011 seeking the restoration of the green cards for the suit parcels.
 - (vii) Other related documents.
4. The Respondents, though duly served with the notice of motion, did not oppose it.
5. Judith Wambui Mugambi and first and second interested parties sought to join the suit on the grounds that any order that the court may make would affect them as they are registered owners of L.R.



KJD/Olchoro- Onyore/11244 and 11250 respectively both of which are resultant from KJD/Ochore/ Onyore/4776 claimed by the Applicant.

The interested parties' application for joinder was allowed. Both of them filed replying affidavits opposing the notice of motion.

6. In her replying affidavit dated August 14, 2018, the first interested party deposes that L.R. 4776 does not exist as it was subdivided and the resultant parcels transferred before orders sought in this motion were issued temporarily.

She adds that she is an innocent purchaser who acquired a title that should be protected so that she can enjoy quiet possession of her property. She urges for the dismissal of the motion and the vacation of the existing orders which she says are prejudicial to her proprietary rights as the registered owner.

7. The second interested party in an affidavit dated March 21, 2022 prays for the dismissal of the notice of motion on the grounds that it is a mere miscellaneous cause which seeks substantive orders and since it is substantive, it should have been instituted by plaint, originating summons, petition or statement of claim but not as a notice of motion.

He adds that he is the registered proprietor of L.R. 11244 and many more parcels which he has disposed off to third parties including the first interested party. He concludes by deposing the order sought directing custody of land records to be delivered to the Deputy Registrar should not issue for absence of jurisdiction.

8. The second interested party filed written submissions on March 22, 2022 and raised the following issues.

- (i) Whether the current motion is substantive or is miscellaneous?
- (ii) Whether orders should issue to affect parties who are not served. Counsel cited several authorities touching on how suits should be instituted under the *Civil Procedure Act* and Rules.

9. I have carefully considered the notice of motion dated November 8, 2011 in its entirety including the grounds, supporting affidavits, replying affidavits, annexures and case law.

I agree that the issues as identified by the counsel for the second interested party would settle the dispute.

On the first issue, I find that the current motion is Miscellaneous and not substantive. It does not seek any cancellation of title deeds, declaration of ownership, eviction or any drastic measures. All that it seeks is to restrain the Land Registrar, Kajiado from dealing with the suit parcels and any resultant subdivisions.

The applicant has given good reasons, namely that the Land Registrar failed to register cautions against the suit parcels and the resultant subdivisions yet the insurance company under statutory management has the original title documents.

The Land Registrar has also failed to give the applicant green cards for the relevant parcels yet under article 35 of the *Constitution*, the applicant has a right to such vital information.

In addition to the above, the notice of motion was directed at the respondents but not to the interested parties.



Even though the interested parties were allowed to participate in this matter, they did not bother to explain how they came to own the land whose original title documents are still in the hands of the insurance company.

Nothing precluded the interested parties from substantially responding to the notice of motion. They should have explained the root of their title.

The fact that the interested parties have title documents to the resultant parcels does not mean such documents cannot be revoked. Under article 40 (6) of the Constitution and section 26 of the Land Registration Act, a title document unlawfully acquired can be revoked.

On the second issue, I find that the orders sought should issue against any parcel that resulted from the two parcels in question. The reason for this is covered in the foregoing reasoning namely that unlawfully acquired property is not protected by the constitution and statute against revocation.

As regards, prayer (c) of the notice of motion which seeks to have the second Respondent compelled to deliver land records to the Deputy Registrar of the court, I find that it is neither just nor fair.

Under section 9 of the Land Registration Act, the duty of maintaining such records is vested in the Land Registrar not in the Deputy Registrar of this court. The best that I can order is that Land Registrar supplies certified copies of the records requested documents as required by article 35 of the constitution.

For the above stated reasons, I allow the notice of motion dated November 8, 2021 in terms of prayers (a) and (b). As regards prayer (c), I allow it in terms of the foregoing paragraph.

For the avoidance of doubt, the three orders are directed against the respondents only.

Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 8TH DAY OF NOVEMBER, 2022.

M.N. GICHERU

JUDGE

