



In re Estate of Late Benjamin Wamanji Njoroge - Deceased (Succession Cause 84 of 1994) [2024] KEHC 13607 (KLR) (5 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13607 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 84 OF 1994
HM NYAGA, J
NOVEMBER 5, 2024
IN THE MATTER OF THE ESTATE OF LATE
BENJAMIN WAMANJI NJOROGE – DECEASED.**

BETWEEN

IRENE KANYI MWANGI & 9 OTHERS & 9 OTHERS APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

PS, MIN. OF LANDS & SETTLEMENTS 2ND RESPONDENT

PS, MINISTRY OF SPECIAL PROGRAMMES 3RD RESPONDENT

PHILIP KAMAU NJOROGE 4TH RESPONDENT

AND

**PHILIP KURIA NJUGUNA & 256 OTHERS & 256
OTHERS INTERESTED PARTY**

RULING

1. By an application dated 27th February 2024, the Petitioners/Applicants have sought the following orders:-
 - a. That this application be certified urgent and be placed ex-parte before the duty court at first instance.
 - b. That the said Phillip Kamau Njoroge, Chairman of the interested Parties, be cited and found in contempt of lawful court orders within his and their knowledge, but deliberately defied by him and his members, be sentenced to civil jail, pursuant to the orders of Prof. Justice Joel



Ngugi as delivered by Hon Chimitei J on 16.1.2023 and signed on 26th January, 2023, more specifically paragraph (v) of the order.

- c. That pending the inter-parties hearing of this application there be a temporary injunction issued to restrain the interested parties and the Respondents, whether by themselves, their employees, servants and/or agents from any interference with and on the suit land, Ndong'a farm Subukia, LR No. 6507/IR No. 2195 through expanded cultivation, leasing to third parties, burying their dead, building and excavating quarries and all other dealings with the suit land therein in any manner whatsoever.
2. The application is propped by the grounds set out on the face of it and is supported by the affidavit of Irene Kanyi Mwangi.
3. In a nutshell, the applicants' case is that this court ordered the Respondents to surrender the title of Ndonga Farm Subukia LR No. 6507/12 No. 2195 farming part of the estate. That the court also ordered that the status quo be maintained. That despite several requests and reminders, the Respondents have failed to comply with the orders of the courts. That the Respondents and Interested parties have continued to cultivate, build and lease the land to 3rd parties and even buried their kin on the said land. That the Applicants require the title in order to effect distribution of the estate.
4. In response, the interested parties filed grounds of opposition in which they state that the application against them is flawed in law and is an abuse of the court process. They also state that they are internally displaced persons (IDPs) who were settled by the Government of Kenya without notice of any defect in title and thus have a legitimate expectation of their entitlement to the same in realization of their socio-economic rights. They further state that it would be absurd that the applicant's want Phillip Kuria Njuguna punished for acts of 3rd parties.
5. The other Respondents namely the Attorney General, the Permanent Secretary, Ministry of Lands and settlement and the Permanent Secretary of Special Programmes did not respond to the application.
6. The interested parties filed submissions which I have paused and will refer in this ruling.
7. The matter stems from a Ruling delivered by my brother Justice H. Chemitei on behalf of Justice J. Ngugi (as he then was) on 26th January 2023. The court ordered the Respondents to surrender the title to the property in question to court pending conclusion of the distribution of the estate herein.
8. The court had found that the Administrator had entered into an agreement for sale of 755 of acres of the land in question to the settlement fund Trustees who were intent settling IDPs who are the interested parties herein. The land was subdivided and the IDPs were settled on it.
9. The court also found that the sale of the land to the Government was not effected on the certificate of confirmation of the grant and directed that the title be deposited in court. The court also ordered that the status quo that had prevailed as at 17/6/2022 to be maintained. It is the alleged failure by the Respondents and interested parties to comply with orders that prompted the present application.
10. The Interested parties submitted that the applicants have not met the legal threshold that would have Philip Kuria Njuguna committed for contempt of court. That it has not been shown what Phillip has done to materially change the status quo. They cited the decision in *Republic vs National Environmental Tribunal, Ex-Parte Palm Homes Ltd and Another* [2013] eKLR.
11. It is further argued that the orders of the status quo meant that the interested parties were to remain on the land and make use of it as they had been doing.



12. The question is what was the status quo that existed as at 17/6/2022? It seems like the status quo was that the interested parties were already settled on the land in question. There is no evidence that shows that they have fundamentally changed the status quo. It is averred that the Interested parties have been ploughing and cultivating on the land. I would want to believe that this is exactly what the Government had intended when it entered into the impugned agreement for sale with the Administrator of the estate.
13. In my view it is difficult to cite Philip Kamau Njoroge for contempt for acts done by the IDPs as a whole. It is not shown that he is the one who, for instance is excavating the quarry. There is a clear indication that a Government agency is carrying out works on the said land. There was need to single out the person responsible for that act. The chairman cannot take the blame for such acts.
14. Having said the above, I think that it is only proper that any major works on the land, not akin to the intent of the Government to settle the IDPs should not be continued. Excavation of a quarry would radically alter the status of the land and so the applicants' application succeeds in that aspect.
15. As was pointed out by the learned judge in the ruling, the question of the validity of the sale is live and undetermined. If it is indeed true that the administrators sold the land in a lawful manner, then the beneficiaries will only have a recourse against that administrator themselves.
16. After evaluating the evidence, I find that the applicants have failed to prove particular acts of contempt against the Interested Parties and their Chairperson in Particular.
17. My view is that the issue at hand can only be resolved if the alleged sale of the land to the Government is addressed, and as soon as possible.
18. In conclusion I find that the prayer for contempt of court as against the Interested parties fails and is dismissed with no orders as to costs.
19. As regards the prayer for injunction, it is shown that there has been activity by the Government agency in charge of roads. I do not think that the court ought to issue orders in vain. The people on the land need access thereto and it would be unwise to block such activity.
20. That said, I am inclined to grant orders of injunction against any quarry excavation on the land be it by the interested parties or any other person.
21. It is hoped that the parties, especially the Ministry concerned with the issues of the IDPS moved to conclude the matter as soon as possible.

SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 5TH DAY OF NOVEMBER 2024.

H.M. NYAGA

JUDGE

