



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC. MISC. CIVIL APPLICATION NO. 12 OF 2019

JEREMIAH M'NJOGUAPPLICANT

VERSUS

EXECUTIVE OFFICER MERU HIGH COURT.....1ST RESPONDENT

DISTRICT LAND REGISTRAR

MERU CENTRAL.....2ND RESPONDENT

DISTRICT SURVEYOR MERU CENTRAL.....3RD RESPONDENT

MARTHA NAITORE M'MURITHI4TH RESPONDENT

RULING

1. On 7/3/2019, the applicant JEREMIAH M'NJOGU M'TORUGOJI filed this Miscellaneous application seeking the following orders:

i. That sub-division of parcel No. Ntima/Ntakira/685 subdivided by the 1st respondent and transacted by 2nd Respondent against Court of Appeal consent order dated 17/5/1988, issued on 21/2/2019 and same sub-division of Ntima/Ntakira/685 also subdivided against Meru High Court temporary stay of execution order dated 23/11/1990 be cancelled by order of this Honourable Court and Court of appeal consent order dated 17/5/1988 be ordered to be implemented by the 2nd and 3rd Respondents accordingly.

ii. That costs of this application be granted to the applicant.

2. Which application is supported by the grounds set out as follows:

a) THAT there exists an unexecuted Court of Appeal consent order dated 17/5/1988 delivered by the Court of Appeal at Nyeri by consent of the disputing parties, and their counsels in Civil Application No. NRB 7 of 1988 (NYR. 9/1987) and the instant applicant as an interested party.

b) That the instant applicant raised issues of existence of the Court of Appeal consent order in light of High Court Decision made on 26/9/1990 in Civil Appeal No. 21/1990 through his review application dated 12/11/1990 and the High Court temporarily stayed execution of its order to the determination of the review application.

c) That the suit land was illegally sub-divided by the Meru High Court executive officer during the temporary stay of execution period.

d) That the 2nd and 3rd Respondents have requested the instant applicant to obtain court order to empower them cancel the illegal sub-division and the illegal transaction to enable them reinstate the suit land and so as to enable them comply with the Court of Appeal order.

e) That the 4th and 5th Respondents in abuse of court process are opposed to execution of the said High Court of Appeal consent order and are in court for that purpose trying to block the 2nd and 3rd Respondents from the ongoing process of implementing the Court of Appeal Order.

3. The applicant has also filed a supporting affidavit where he has reiterated the grounds in support of the application. He has also availed

copies of the Court of Appeal order of 17.5.1988 in Nyeri CA. NO.7 OF 1988 and the order of 23.11.1990 in MERU H.C.C.C. NO. 21 OF 1990 amongst other documents.

4. On 6/6/2019, the applicant filed another application where he is seeking the following orders: -

- i. *“That this instant application be heard together with my other application dated 6th May 2019.*
- ii. *That copy of Land Registrar which copy of Register was issued to the instant application on 1/7/1996 as being the true copy of Register for Parcel of Ntima/Ntakira/1685 be declared to be illegal, along it's entries No. 4 and No. 5.*
- iii. *That copy of Register for Land Parcel Ntima/Ntakira/685 which copy of Land Register was issued to the instant applicant on 16/7/1992 as being the true copy of Register for Land Parcel No. Ntima/Ntakira/685 be and is hereby declared as the true copy of the Register for Parcel No. Ntima/Ntakira/685 along its entries No's 1, 2 and 3.*
- iv. *That costs of this application be granted to the applicant.”*

5. The grounds in support of the application are;

- a) *That the copy of Register issued to the applicant on 1.7.96 is a counterfeit of the original copy of Register issued to the applicant on 16.7.92.*
- b) *That the counterfeit of Register issued to the applicant on 1.7.96 was opened to counteract execution of court of appeal order dated 17.5.1988 which copy of register entries No. 4 and 5 were back dated to 1991 as opposed to the true copy for the Register dated 16.7.92.*
- c) *That the original copy of Register issued to the applicant on 16.7.92 did not bear the entries No. 4 and 5 which are fraudulently entered on the counterfeit copy of Register dated 1.7.96.*
- d) *That the 2nd and 3rd Respondent's and their predecessors have been using the Fraudulently drawn copy of Register with entries No. 4 and 5 to oppose and to dispute execution of Court of Appeal order dated 17/5/1988.*
- e) *That the counterfeit copy of Register of 1.7.96 is for that reason hereby declared illegal and the original copy of Register issued on 16.7.92 is declared the true copy of Register for parcel Ntima/Ntakira/685.*
- f) *That the 1st Respondent's office's conduct is an Atrocity which has costed the instant applicant years of legal tussle due to lack of the 1st respondent's office's responsibility.*

6. The applicant has again filed a supporting affidavit reiterating the grounds in support of the application and he has availed green cards for parcel no. Ntima/Ntakira/ 685.

7. The 5th Respondent has opposed both applications via a rather lengthy affidavit filed on 2/7/2019, where the history of the dispute through the decades has been captured.

8. On 9/7/2019, Mr. Kiongo, counsel for the 1st – 3rd Respondents alerted the court that the present applicant has filed a matter at the **Court of Appeal in Nyeri case No. 16 of 2018** (filed on 16/2/2018) whereby the present applicant is seeking enforcement of the subdivisions of the suit land and that the Court of Appeal has not rendered a decision yet. The counsel further informed the court that there are other matters which have been filed concerning the dispute and he urged the court to peruse the same.

9. Mrs Kayugira appearing for the 5th Respondent informed the court that the suit land was Ntima/Ntakira/685 which was subdivided in 1991 resulting in parcels numbers 2488 and 2489. She contended that the parties have been in court for the last 32 years and she itemized some of the matters which have been filed during this period touching on the subject land as:

- 1. Meru C.A. No.21 of 1990 (H.C.A)**
- 2. Meru H.C, Misc. JR No. 30/2003 (H.C)**
- 3. Meru Misc. JR No. 5 of 2008 (H.C.)**
- 4. Meru H.C. JR No. 31 of 2013.**
- 5. Meru H.C. JR No. 7 of 2015**
- 6. Meru H.C. JR No. 19 of 2016**
- 7. Meru H.C. JR No. 7 of 2016.**

10. In response, Applicant stated that his intention is to clear the way for the execution of the Court of Appeal order dated 17/5/1988. He however admitted having filed an application at the Court of Appeal Nyeri via directions of Justice Gikonyo, who had declared that the court is functus officio in the other matters. He contends that the subject matter in the two suits as well as in other matters are different.

11. In a brief ruling which I delivered on 29/7/2019, I found that applicant was not candid regarding the nature and existence of the other matters. I therefore gave directions that, the court would peruse the files and determine their status. I also barred the applicant from filing any other application until this matter is finalized. This ruling is therefore meant to give directions on how this matter is to be finalized.

12. The following files have been availed to me from the registry, of which I have perused the same;

1. Meru H.C.C.C. Civil Appeal No. 21/1990

2. Meru ELC JR No. 5 of 2008.

3. Meru JR H.C.C. No. 31 of 2014

4. Meru EL JR No. 7 of 2012

5. Meru ELC Misc. Appl No. 19 of 2016

I have also established that a file No. Meru ELC JR No. 9 of 2015 is with the Honourable Justice Enock Cheron (Kerugoya ELC) for writing of the judgment.

13. A perusal of the above mentioned files (save JR 9/15 - which is not within my reach) reveals that the original suit land was Parcel No. Ntima/Ntakira/685 which land was sub-divided in the 1990's. The dispute has been in the court corridors in both the High Court and the Court of Appeal particularly touching on the interpretation of the Court of Appeal order of 17/5/1988 and the High Court judgment of 26/9/1990. I have also established that the mother file containing the litigation history is **MERU H.C. C.A. NO 21 OF 1990**. I will briefly highlight the status of the aforementioned files.

(i) MERU HCCC NO. 21/1990.

The applicant in the ruling of Justice Gikonyo delivered on 29/10/2018 (the same being the last/final proceedings in that file) was Jeremiah M'Njogu, a son of the Appellant Twarugoji Kirimanya. The judge has given the odyssey of the dispute in the litigation arena and I find it necessary extract of some of the content there in.

"It is unfair for the applicant to now state that the ruling were given contrary to court procedures, and contradicting the same court's existing decisions, and for that reason the same are misjudgments, illegal and cannot co-exist with the rest same court's existing judgment. How I wish the applicant could go back to Court of Appeal - if there are proceedings there and ask for appropriate answers rather than keep on coming back to this appeal which was concluded long time ago (Emphasize added)
.....

I even doubt whether this court has any judicial power left to exercise in these proceedings. I declare this court functus official. This court will no longer engage itself in any interpretation of the orders of the Court of appeal

(ii) MERU ELC JR 5 OF 2008

Jeremiah M'Njogu had filed this matter seeking to have Janet Tirindi, the Land Registrar, District Surveyor and Chairman of Land Control Board Meru Central committed to civil jail because of **subdividing the land Ntima/Ntakira/685 contrary to the Court of Appeal order in Nyeri case No. 7 of 1987 and 15 of 1990.**

Judge E. Cheron handled this matter during the Meru ELC service week and was to write a judgment but on 3/6/2019, he stated that he was unable to write the same due to the confusion caused in **JR No. 19 of 2016**. The matter is pending.

(iii) MERU ELC JR No. 31 of 2013

Jeremiah M'Njogu was seeking an order to declare that a court order in **Meru CA No. 21/1990** given on 26/9/1990 was invalid, void and un existing.

The matter was dismissed during Meru ELC service week by Judge Mwangi Njoroge (Kitale ELC) on 19/2/2018.

(iv) MERU ELC JR No. 7 of 2016.

The applicant Jeremiah M'Njogu M'torugoji had sought orders to prohibit the District Land Registrar from further sub-division of Ntima/Ntakira/2488 and 2489 and for the two parcels to revert back to parcel Ntima/Ntakira/685 to facilitates the implementation of the orders in Nairobi Civil Application No. 43 of 1991 and Nyeri Civil Application No. 15 of 1990. The suit was dismissed during the Meru ELC service week by Judge Cheron on 28.2.2019 at the exparte stage of leave to file a substantive motion.

(v) **MERU ELC Misc. Appl. No. 19 of 2016.**

In this matter, Jeremiah M’Njogu had wanted inter alia a restriction on parcels No. Ntima/Ntakira 2488 and 2489, reinstatement of parcel No. Ntima/Ntakira/685 and a review of earlier court rulings. On 14/9/2016, Judge P.M. Njoroge directed that the matter (JR. NO.19 of 2016) along with J.R No. 5 of 2008 be heard by Judge Gikonyo. A ruling delivered thereafter on 26/9/2016 gives a sneak preview as to why Justice Njoroge directed the matters to be heard by Gikonyo J. and he cited the existence of several other matters, including MERU HC CA No. 21 of 1990 (see the first file herein) where Judge Gikonyo has given a substantive ruling on the matter. This matter JR 19 of 2016 is pending.

14. Even without delving into the status of other files like JR 9 of 2015 which are not within my reach as at now, it is crystal clear that in one way or another, the subject matter is the same which is the interpretation of the Court of Appeal ruling of 17/5/1988 in Nyeri CA, Civil Application No. 7 of 1988 and various orders in Meru HCCA No. 21 of 1990 touching on the subject suit land No. Ntima/Ntakira/685 and the resultant sub-divisions Nos. 2488 and 2489.

15. Judge Gikonyo wished that the applicant could go to the Court of Appeal of which applicant took the cue and he has admitted to having filed a matter there which has not been decided. The question is, **why then has the applicant filed this miscellaneous application?**

16. In the case of **Lawrence Kinyua Mwai Vs Nyariginu Farmers Co. Ltd. & Another ELC No. 177 of 2017, (formerly Meru HCCC No. 120 of 1988 consolidated with Meru H.C.C. No. 141 of 1988)**, I was dealing with a situation where the applicant had been filing endless applications in respect of the same issues, and I stated as follows on matters Active Case Management: -

“The circumstances of this case where the dispute has been in the legal arena for decades demand that this court imposes Active Case Management in order to achieve the overriding objective set out under Section 1A and B of the Civil Procedure Act even if it appears to be rather late in the day to do so, in order to have a closure in this file. Active case management is one of the best practices to combat case backlog and is anchored on the courts ability to exercise judicial control over processes with a view to ensuring that the overriding objective is achieved.

Active case management is also the effort by courts to handle cases in such a manner that they are resolved fairly and as promptly and economically as is reasonable in the circumstances of the case. The fairness part can be found within the notion of procedural justice while the promptness and economics part of the case management can be found within the notion of the efficiency of justice. Efficiency of justice implies that justice is done at reasonable costs to the parties and the court and within a reasonable time, that is without an abnormal delay. Procedural justice concerns the fairness, consistency and the transparency of the processes by which progress in a case is made.

It is rather astounding that the plaintiff chose to litigate in this court for all these years without challenging the various rulings and orders in the Court of Appeal, particularly the ruling of 30/5/2011 where the award was read in court.

In light of the foregoing analysis, and taking into account the Active Case Management principles and techniques, I will now proceed to forcefully dismember the GORDIAN KNOT which has choked this file for decades by not only allowing the application dated 1.12.11 but by giving other directions geared towards bringing a closure to this matter.”

17. It is an abuse of the court processes for the applicant to continuously keep on filing numerous matters and applications before this court in respect of the same subject matter. His recourse lies in appealing or seeking a review in the main file MERU H.C.C. A NO. 21 of 1990 and not in filing satellite matters whose end result has been convolution of the dispute as well as wasting precious judicial time.

18. In light of the foregoing, I take cue from my ruling in the cited case of **Lawrence Mwai (supra)**, whereby I will proceed to dismember the Gordian Knot in this dispute by giving the following directions; -

1. This matter as well as the two pending matters Meru ELC JR No. 19 of 2016 and Meru ELC JR No. 5 of 2008 are hereby dismissed.

2. This court will not entertain any other matter touching on the issues raised in Meru H.C.A No. 21 of 1990 which file is marked as closed.

3. A copy of this ruling is to be put in the two pending matters JR No. 19 of 2016 and JR No. 5 of 2008 and in Meru it HCA No. 21 of 1990.

4. The Applicant, Jeremiah M’Njogu is hereby condemned to pay costs of the suit in the three files Meru Misc. No. 12/19, Meru JR No. 19 of 2016 and Meru JR No. 5 of 2008 to the respondents in those files.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 12TH FEBRUARY, 2020.

IN THE PRESENCE OF:

C.A Kananu

Applicant present

Kiogo for 1st, 2nd and 3rd Respondent

Mr. Kayungira for 5th Respondent - absent

HON. LUCY. N. MBUGUA

ELC

JUDGE
