



Kangogo v Kimalel Group Ranch (Environment and Land Appeal E008 of 2024) [2025] KEELC 155 (KLR) (22 January 2025) (Ruling)

Neutral citation: [2025] KEELC 155 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND APPEAL E008 OF 2024**

**L WAITHAKA, J
JANUARY 22, 2025**

BETWEEN

JACKSON KANGOGO APPLICANT

AND

KIMALEL GROUP RANCH RESPONDENT

RULING

1. By a Judgment delivered on 24th July 2024 in Kabarnet CMC ELC Case No. 24 of 2023, the trial court entered Judgment against the defendant, now appellant /applicant, in the following terms:-
 - a. Targok Chelingo is the rightful and/or lawful owner of all that parcel of land known as Baringo/Kimalel/2 measuring approximately 4.3 acres as identified by the survey committee and is entitled to quiet possession and enjoyment thereof;
 - b. The defendant is illegally and unlawfully in possession and using part of the parcel of land known as Baringo/Kimalel/2 measuring approximately 4.3 acres as identified in (a) above;
 - c. The defendant is entitled to a portion of that parcel of land known as Baringo/Kimalel/2 that is due to his deceased father as a member of Kimalel Group Ranch and for which he has paid survey fee;
 - d. The plaintiff through its survey committee to identify and apportion to the defendant the portion of land that is due to his deceased father as a member of Kimalel Group Ranch within 14 days of the date of this judgment.
 - e. The defendant to have 14 days after being apportioned the parcel of land as in (d) above, to vacate the portion that he is illegally occupying, failure to which eviction orders to issue.
 - f. Prayers for general damages for trespass to land and mesne profits are not tenable as there was no proof of damage suffered by the plaintiff;



- g. Costs of this suit are awarded to the plaintiff.
2. Dissatisfied by the Judgment of the lower court, the defendant appealed to this court and filed an application for stay of execution of the judgment and decree of the lower court pending the hearing of the application and the Appeal.
3. During the pendency of his application for stay, the respondent moved to the lower court and obtained eviction orders, which it enforced on him.
4. Contending that the eviction orders were irregularly issued and executed against him as the respondent did not comply with the conditions set by the lower court for his eviction, the appellant/applicant filed the notice of motion dated 25th October 2024 through which he seeks the following reliefs/orders:-
 1. Spent;
 2. An order of restoration of the status quo that was prevalent before mid-day on 22nd October 2024 by ordering reinstatement of the applicant into the suit property pending the hearing and determination of the application interpartes and the appeal he lodged before this court;
 3. The order of reinstatement be enforced with the aid of the OCPD Marigat;
 4. An order of injunction restraining the respondent whether by its servants, workmen, agents or otherwise howsoever from further evicting the applicant and/or denying the applicant the access and use of the suit land in which the applicant has been residing all along pending hearing and determination of his appeal;
 5. Costs of the application.
5. The application is supported by the affidavit of the applicant in which the grounds on the face of the application are reiterated.
6. The respondent, through the replying affidavit of its Chairperson, Jeremiah K. Kipkurere, sworn on 2nd December 2024, has inter alia deponed/explained that in a bid to comply with the decree of the court, they invited the applicant for a meeting at the chief's office but he failed to turn up for the meeting; that owing to the applicant's demonstration of lack of willingness to engage the leadership of the respondent with a view of facilitating compliance with the decree of the court, they commenced eviction orders against the applicant. The respondent has further deponed that they fully complied with the decree of the court by allocating the applicant's father parcel number Baringo/Kimalel/950 which parcel is currently occupied by the applicant's brothers, a fact the applicant is aware of.
7. The respondent contends that the orders sought by the applicant cannot issue because they are either premature or have been overtaken by events.
8. In a nutshell, the respondent contends that the applicant has not made up a case for being granted the orders sought.
9. In a rejoinder, the applicant filed a supplementary affidavit sworn on 6th December 2024, in which he maintains that the respondent did not comply with the decree of the court before evicting him from the suit property. Maintaining that the eviction was maliciously meant to defeat the application for stay of execution of the Judgment of the lower court which he had filed before this court, the applicant avers that he was not served with any letter or invitation to attend any meeting with the respondent's leadership as alleged. He terms the respondent's allegation that he was served with the letter purportedly served to him inviting him for a meeting to discuss compliance with the decree of



the court as not only false but also unsupported by any evidence. He is also not aware of the purported allocation of parcel number 950 to his father.

10. The applicant takes issue with the manner in which the order of eviction was issued and enforced against him. In that regard, he complains that the order was issued ex parte, without confirmation that the decree of the court had been complied with by the respondent. Concerning the mode of execution of the eviction order, the applicant laments that it was neither served on him nor enforced in accordance with the applicable law and procedure thereby greatly prejudicing him.
11. Concerning the respondent's contention that the orders sought cannot issue because they are either premature or have been overtaken by events, the applicant avers that pursuant to the overriding objective principle, the court can grant the order of reinstatement.
12. The applicant filed submissions, which I have read considered.
13. The respondent's submissions if filed, were not placed in the court file.

Analysis and Determination

14. From the application, the response thereto and the submissions filed by the applicant, the main issue for the court's determination is whether the applicant has made up a case for being granted the orders sought.
15. In that regard, it is not in dispute that despite having determined that the applicant was illegally and unlawfully occupying a portion of the suit property hence needed to be evicted thereof, the trial court gave directions that needed to be complied with before eviction against the respondent could ensue.
16. Whilst through the replying affidavit and the further affidavit of the Chairperson of the respondent the respondent claims that it complied with the order of the court by allocating plot number 590 to the applicant's father, no evidence capable of proving that fact was availed by the respondent to this court. The allegation by the respondent that the applicant refused to cooperate with the leadership of the respondent by failing to avail himself for a meeting that was convened by the applicant to discuss compliance with the decree of the court was also not proven.
17. Upon review of manner in which the eviction orders were processed, issued and enforced against the respondent, I do agree with the applicant that there were irregularities in that process, thereby denying the applicant an opportunity to be heard on the allegations on the basis of which the eviction orders were sought and obtained.
18. Although the respondent through the further affidavit of its Chairperson, Jeremiah K. Kipkurere, claims that the eviction order was served on the applicant through the area chief, no affidavit of service was filed by the respondent capable of proving that fact.
19. In the absence of any affidavit of service confirming that the applicant was indeed served with the eviction order before it was enforced against him, I find and hold that the applicant was denied the safeguards provided in Section 152G(1)(i) of the Land Laws (Amendment) Act, 2016 which provides as follows:-

“ 152G

- (1) Notwithstanding any provision to the contrary in this Act or in any other written law, all evictions shall be carried out in strict compliance with the following procedures:-



(a)

(i) give the affected person the first priority to demolish and salvage their property.”

20. That section of the law presupposes that an eviction order, where possible, ought to be served on the person affected by it before the eviction process can ensue. That is the only way, the safeguard contemplated in section 152G(1)(i) can be given effect.
21. Despite there having been irregularities and breach of the applicant’s rights in processing and enforcement of the eviction order issued against the applicant, the order that commends itself in the circumstances of this case is an order directing the respondent through its leaders to, within 7 days from the date of delivery of this ruling, put the applicant in possession of the parcel of land allocated by the respondent to his deceased father, failing which an order restoring the applicant to the portion he was occupying before he was evicted from the suit property shall automatically issue pending hearing and determination of the applicant’s appeal pending before this court.
22. Such an order fits well in the circumstances of this case as the trial court did find that the applicant has a beneficial interest in the suit property, which beneficial interest it protected by directing the respondent, through its survey committee, to identify and apportion to the defendant the portion of land that is due to his deceased father as a member of Kimalel Group Ranch within 14 days of the date of the Judgment.
23. The respondent cannot run away from that obligation by claiming that the portion allocated to the applicant’s father is currently occupied by his brothers. The order issued by the trial court was specific on whom the parcel belonging to the applicant’s father needed to be shown and apportioned. It is not enough for the respondent to claim that the applicant is aware of the portion allocated to his father. The order issued by the trial court required the respondent not only to identify the portion but also to apportion it to the applicant.
24. In view of the foregoing, I order and direct the respondent through its leaders and survey committee to, within 7 days from the date of delivery of this ruling, put the applicant in possession of the parcel of land allocated by the respondent to his deceased father, failing which an order restoring the applicant to the portion he was occupying before he was evicted from the suit property shall automatically issue pending hearing and determination of the applicant’s appeal pending before this court.
25. Having determined that there were irregularities in the process that culminated in the eviction of the applicant leading to denial of some of the applicant’s rights guaranteed by law like giving the affected person the first priority to demolish and salvage their property, I’m inclined to grant the applicant the cost of the application, which I hereby grant him.
26. Orders accordingly.

DATED, SIGNED AND DELIVERED AT KABARNET THIS 22ND DAY OF JANUARY 2025.

L. N. WAITHAKA

JUDGE

Ruling read virtually in the presence of:

Mr. Kiptoon for the Applicant

Ms. Kogo for the respondent



Court Asst.: Ian

