



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO. 253 OF 2013

WINFRED KAGENI BUNDI.....PLAINTIFF/APPLICANT

VERSUS

LAND ADJUDICATION & SETTLEMENT OFFICER

TIGANIA EAST AND WEST DISTRICT.....DEFENDANT/RESPONDENT

RULING

This application is dated 24th November, 2014. It is said on the face of the application that it is predicated on Order 51 rule 1 of the Civil Procedure Rules, 2010 and section 3 and 3(a) and 63 (e) of the Civil Procedure Act.

It seeks orders:

1. *That this honourable Court do issue an order for Justice P. M. Njoroge, Judge do (sic) disqualify himself from further hearing of this case as have (sic) complained to resident judge, Meru and to Chief Justice of Supreme Court of Kenya and on 21st November, 2014 at Supreme Court of Kenya was advised to make an application so that the honourable Court shall instruct another Judge to hear the matter.*
2. *Cost in the cause.*

The application has the following grounds (exactly in the language and words used by the applicant):

1. *Defendants have never filed defence since service 2013.*
2. *Defendants have not opposed application for interlocutory judgment dated 7th May, 2014.*
3. *Defendants have not opposed filed and served application under certificate of urgency on 17.7.2014 and under notice of motion filed on 21.7.2014 so that court can allow them to proceed on 4.12.2014.*
4. *Defendants have filed defective land documents that were used on 8.10.2014 proceedings.*
5. *No instructions on court record from Principal Secretary of ministry of lands to Attorney general nor record of Attorney general to come on hearing that is irregular and illegal.*
6. *The District land adjudication and settlement officer Tigania East never identified themselves in Court with Rungole Kiproto and might be un gazetted government officers.*
7. *The District land adjudication and settlement officer Tigania East Mr. Ouru K. Obingo is in contempt of court orders issued on 5th June, 2014 and has blatantly confirmed will never implement the court orders and even threw me out of his office in Miriri being accompanied by Secretary of Njuri Ncheke council of elders on 20.11.2014 at 3.25 P. M. an issue that I reported to Principle Secretary on 21.11.2014 at Ministry of lands Nairobi.*

8. *The main Njuri Ncheke council of elders did survey the land with land officers, demarcating officers and on 21.11.2014 were taking over their report to Ouru K. Obongo who closed the office and blatantly ignored them.*
9. *Defendants have never complied with civil procedure rules order 7 rule (5) and order 11 and therefore order issued on 5.6.2014 can be enforced on 4.12.2014 as was not issued in vain.*
10. *Plaintiff do request the Judge do disqualify himself from further hearing of this suit due to what happened on 8.10.2014 as presumed the land officers are unqualified to stand before the court of law if they are unable to file proper documents nor sign official letters.*

The Applicant's supporting affidavit dated 24th November, 2014 states (in applicant's own words and language):

1. ***That I am aware of this matter since filing of this suit as up to date no defence filed by defendants.***
2. ***That defendants have not complied with the law since services.***
3. ***That is a mandatory requirement for any government ministry to and especially lands ministry have issued instructions to 1st Defendant in order to come on record which is not the case here as was not served with documents as required in law.***
4. ***The plaintiff applied for INTERLOCUTORY JUDGMENT in the filed application dated 7th May, 2014 and served that is not opposed hence defendants lacks jurisdiction to address court on 4.12.2014.***
5. ***That Defendants have to identify themselves before being admitted to proceed with case especially Ouru K. Obingo and Mr. Rungole Kiproto as might be are not qualified nor gazetted officers and since they could not sign their letters and filed, defective documents in court and Honorable court Erred in law in allowing them to proceed on 8.10.2014 while no defence filed.***
6. ***That this is an Honorable court of law and legally recognized in constitution of Kenya 2010 and therefore strict Action may be taken against the defendants as this is a serious land matter and plaintiff is being denied her legal rights through this officers who cannot obey court orders issued on 5.6.2014 as if were issued in vain.***
7. ***That defendants are strangers and since have not complied with the law this Honorable court can only enter interlocutory Judgment against the Defendants.***
8. ***That on 21.11.2014 I did proceed to seek help from President, Chief justice of Supreme Court of Kenya and was advice to apply for this application for the Judge to disqualify himself since have no faith and see matter is not dismissed for no apparent reasons.***
9. ***That our constitutions of Kenya 2010 do allow citizens to seek help for any pressing issues as therefore do ask the Honorable court do issue court orders as prayed.***
10. ***That on 21.11.2014 did proceed to see principal secretary Ministry of lands Nairobi and handed over the same court orders signed and received by Ouru KEFA OBINGO and confirmed that has blatantly refused/or rejected to obey and promised me shall take serious matters.***
11. ***That I pray that if orders prayed are not issued I shall go untold sufferings and might even loose this land***
12. ***That what is deponed herein is true to my best knowledge, information and believe.***

The applicants original application by way of Notice of Motion is dated 24th September, 2013. It seeks the following orders (in the words and language of the applicant):

1. ***That this application be certified urgent, admitted to hearing ex-parte and service of the same dispensed with in the first instance.***
2. ***That this honourable Court be pleased to issue an order to implement an order that was given in Civil Case No. DMCC No 141 of 1971 (orders) on Tribunal of Mikinduri Antuamburi Adjudication section on 4.8.2011 as original land parcel No. 524, 810, 287, 947, 852, 158, 158 and 348 that have not been implemented by Land Adjudication and Settlement Officer, Tigania District.***
3. ***That costs be provided for.***

The application is supported by the supporting affidavit of the applicant and the following grounds:

- i. *That in 1971 the matter was concluded where it was decided in the plaintiff's father's favour.*
- ii. *That the matter was taken to Mikinduri/Antuamburi Section which referred to the 1971 decision and hence implementation was ordered on 4th August, 2011 by Director of Land and Adjudication and Settlement due to fraud and corruption by government officials and never implemented the decisions as per letter dated 1st August, reference No. Comp/2/63/64.*
- iii. *The District commissioner issued orders to Tigania East/West District Adjudication office to implement same under Attorney General's Chamber's letter dated 15th July, 2013 and ignored (sic).*
- iv. *The original photostat MAP is annexe showing Mihiriga Kathiori in Murega Village to my father (sic) Mathio Kanyi in 1971 namely A, B, C, D and E that Tigania Land Adjudication Officer has not implement up to date 2013 Court order on 1.7.1971 (sic)*
- v. *That I inherited this land from my father and has (sic) been denied my right of ownership.*

The Applicant's affidavit in support of the original application dated 24th September, 2013 states (in her own words and language):

1. *That I am a female of sound mind and competent to swear this supporting Affidavit.*
2. *That my father (late Mathio Kanyi) was registered owner of Antuamburi adjudication Section original No. 524 and 287 together with the whole parcel of land known as Miriga Kathiori, See annexed MAP "WKBI".*
3. *That the said land parcel No. 524 is 81 Acres where 287 is 74 acres or thereabout and other un implemented lands parcels to date (2013).*
4. *That in 1971 the matter was concluded where it was decided in my father's favour order issued on 1st July, 1971 (annexed) however my father was alleged to have assaulted some members and imprisoned for seven years (7) Annexed "WKB 2".*
5. *That upon completion of his jail he embarked on the chase of these portions of land by heading upto direction vain.*
6. *That we were directed to avail for A. R. objection thus we lodged our complaint at Mikinduri Antuamburi Adjudication section which referred to 1971 decision hence was ordered on 4th Aug. 2011 by Director of land Adjudication & settlement attached herein "WKB3".*
7. *That on the 24th January 2012, I went to District commissioner's office asking for security regarding the implementation by the district land Adjudication officer declined be of any assistance due to injustice annexed "WKB 4"*
8. *That is clear the District Land Adjudication officer Tigania West and East has admitted that they have never implemented the said decision as per their letter dated 14th October, 2011 of the original land parcels as indicated in my prayers No. 1 in my notice of Motion*
9. *That on several occasions I complained to the Attorney General for Assistance Annexed "WKB 5"*
10. *That to date (2013) the said implementation has never being done and in fact the District Adjudication Officer West and East district have allowed illegal Transaction and has allowed illegal people through fraud to trespass into the said land in the process of legalizing their illegal acts in attempt too acquire titles.*
11. *That my father passed away in 2005 and after transferring the whole original land No. 524 to me that has never been implemented according to the court order.*
12. *That the land parcel No. 287 was fraudulently taken our consent were the matter was before Njuri/Ncheke where it was decided that the land be returned to my father after oath.*
13. *That the same position was taken by the A. R. which map I have not been able to access yet but the decision was reached in our favour.*
14. *That by a letter from the Director of Land Adjudication and Settlement dated 1st August 2012 a question was raised to the District Land Adjudication and Settlement Officer as to why implementation was not attended annexed "WKB6" S.*
15. *That by a letter from the Attorney General Chambers dated 15th July, 2013 to the District Adjudication and Settlement Officer the same question was raised as to why implementation was not affected annexed "WKB 7".*

16. *That I hereby pray that Honourable court do grant the orders as prayed as shall go untold suffering due to none compliance of Court order by adamant government officers.*
17. *That the land disputed in court in 1971 was original Plot No. L. R. Mariga/Kathiori/524 and 287 and should be implemented as at the stage a judgment to the court order still stands as confusion has been created by fraudulent and corrupt land officers and case related does not supersede the court of law, civil case No. DMCC 141 of 1971 (orders). That the returning Nthenge oath full report is supported by Nthenge oath letter reference above sketch map plan and order issued on 10.07.1971.*
18. *That the land Adjudication officer Tigania West/East District since 1971 ignored court order issued in civil case No. DMCC No. 141 of 1971 to implement the whole of my father's land on the ground the original No. 524 and sold/fraudulently to people deprive me the whole land Especially the land parcel No. 524, 287, 984, 1947, 1842, 158, 3218, 11670, 3266, 3626, 139, 1454, 2266, 3061, 1444, 1441, 6272, 3162, 1464, 3173, 810, 1858, 787, 1147, 6103, 3169, 6104, 6102, 6196, 1797 and others were corruptly issued to wrong people as per directors of land Adjudication and settlement dated 1st August 2012 among others.*
19. *That I hold National ID/Card No.4530707 but have denied my inheritance and demand all these unlawful registered parcels be vacated in the register.*
20. *That Mathew Kanyi was my father ind in 1952 took oath of Nthenge to defend 4 clans and surrounded with boundaries according to 1971 Court removed all trespasser from our land according to Civil case No. DMCC 141 of 1971 orders and therefore corrupt land officers did place the illegal mapped boundaries as original land No. 524 as ABCB and E were not there except one Block of Mihiriga /Kathiori/No. 524, 278 etc and sold to none-owners and the Honourable court do note the Tigania District Antuamburi A. R. Section ruling issued on 4.8.2011.*
21. *That all I have deponed herein is true to my best knowledge, information and belief.*

The application came before me exparte on 25.9.2014. The applicant told the Court that she wanted "an order of implementation." I directed the applicant to serve the defendants/applicants. The matter was in Court on 19.12.2013. It was evident that the applicant had not served the defendants as the Court had directed on 25.9.2013. She was directed to serve the defendants and to obtain a date for the hearing of her application from the Registry.

The matter was in Court another time on 23.1.2014. The applicant told the Court that she wanted the Court to give her an order for her land whatever that meant. Mr. Kieti for the respondents told the court that he opposed the applicant's application but needed time to put in formal pleadings. He opined that, perhaps, the applicant being a lay person was not seized of the legal matters pertinent to this application. He pointed out that the applicant was unaware that no conclusive orders could be given at an Interlocutory stage. He sought a mention date but said that the way this application was framed, it should be dismissed. The applicant told the Court that Advocate Ogoti and one Michael Kungu Kigia were helping her with her pleadings.

I directed the defendants to respond to the application. I also asked the parties to engage in discussions to see if they could agree on some of the issues. I directed the parties to come back to court on 4.3.2014.

On 4.3.2014, Mr. Kieti informed the court that he had sought instructions from the defendants and that it was impractical to pursue a settlement. He informed the Court that he had filed grounds of opposition and that he was eager to have the applicant's application heard. He also sought leave of Court to file a defence. Leave was granted.

On 2.4.2014 Mr. Kieti, for the Ag, for the Respondent, complained to the Court that on various occasions the plaintiff had, in the presence of the process server refused to accept service of the defence and other documents filed in Court on 27.3.2014. He asked that the defence and other documents be served upon the plaintiff in court. The defence and the other documents were duly served upon the plaintiff in court.

On 5.6.2014 the following applications in this suit were concurrently and simultaneously heard by the Court. These are the plaintiff's applications dated 24.9.2013 and 7.5.2014 and the Preliminary Objection by the defendants dated 24.3.2014.

The plaintiff's application filed by way of Motion dated 24th September, 2013 seeks orders (in her own words and language):-

(a) That this application be certified urgent, admitted to hearing ex- Parte and service of the same be dispensed within the first instance.

(b) That this Honourable Court be pleased to issue an order to implement an order that was given in Civil Case No. DMCC No. 141 of 1971 (orders (sic) on Tribunal of Mikinduri Antuamburi Adjudication Section on 4.8.2011 as original land parcel No. 524, 810, 287, 947, 852, 158 and 348 that have not been implemented by land adjudication and settlement officer, Tigania District.

(c) That costs be provided for.

The second Application was a Notice of Preliminary Objection filed by the Attorney general for the 1st and 2nd defendants. It is dated 24th March, 2014 and has the following ground:-

- 1. The cause of action is time barred as it offends the express provisions of section 3 (1) of the Public Authorities Limitation Act, Laws of Kenya.**

The Defendants prays that this suit be dismissed with costs. This Preliminary Objection was to be buttressed by Grounds of Opposition dated 3.4.2014.

The third application by way of Notice of Motion is dated 7th May, 2014 and was filed by the plaintiff on 8.5.2014. It seeks orders (in the the plaintiff's own words and language:

- 1. That the Honourable Court be pleased to issue an order for INTERLOCUTORY Judgement be issued (sic) against the 1st defendant who was properly served according to the affidavit of service filed in this Honourable Court dated 26th March, 2014 and received in this Honourable Court on 1st April, 2014 and then Honourable court do dismiss the notice of preliminary objection issued on 24th March, 2014 and filed on 21st March 2014 as on record the state law officer is on record 2.4.2014, stated was unable to summon/serve the 1st defendant hence my fundamental rights and constitutional rights as enshrined in our Constitution of Kenya 2010 chapter four Article 40 is being violated for no apparent reason and request the Honourable Court do enter interlocutory judgment as per annexed affidavit of service then I seek leave of court to allow application,**
- 2. That cost of the application be provided for.**

After hearing the 3 applications, I found it necessary to find out the status of the parcels of land the plaintiff was claiming to establish, whichever way my ruling went, whether any unenjoined parties would be affected.

I ordered Mr. Kiongo, State Counsel, to have the concerned District Land Adjudication and Settlement Officer file the required report. The required report was presented and read to court on 8.10.2014. It was dated 19.6.2014 and read as follows:

RE: CIVIL SUIT NO. 253 OF 2013 HIGH COURT OF KENYA MERU

In the matter of Winfred Kageni Vs The District land Adjuicationand Settlement Officer Tigania East/West Districts, the following is the status of each of the parcels of dispute:-

- 1. P/No 348 (Serial No.335) was gathered by one Itaru Mithiauru in an area called Thathi and measures approximately 3.64 acres. The parcel was demarcated for the said owner***

in sheet 9A on 27.6.1994 and has no pending dispute filed against it.

2. *P/No. 158 was gathered by one Baranaba Mwongo in two areas, Rware and Githuni measuring approximately 3.49 acres and is still in the same names. It wasn't affected by any objection.*
3. *P/No.524 according to the Adjudication record held in this office shows it as registered under Winfred Kageni Nkonge and measures approximately 0.08 acres in sheet 70.*
4. *P/No. 287 recorded under Gideon Kiao Laikuru gathered a total of 74.20 acres in Kathiori and Miiriga fragments (7 fragments). He transferred 11.0 acres to P/No 1441 of Joseph Mugambi Lingera, 20.53 was transferred to P/No 810 vide Land committee Case No. 302/68, and the balance of P/No 1444 of Erastus Silas Muthamia Marete.*
5. *P/No 810 is recorded under the names of Mungania Mwirichia and had gathered 1.32 acres and was awarded 20.53 from P/No 287 (as indicated above) vide LCC 302/68 and 8.97 from P/No 1299 vide case 301/68. During the objection to the adjudication Register, Winfred Kageni Bundi was awarded 5.00 acres from P/No 810 vide A/R Objection 3266. (she has since transferred it to Joseph M'Ngai M'Tuamwari).*
6. *P/No 852 was gathered by Muthuri Gataya in Rware and Athathi area measuring approximately 3.48 acres. It has had no case/objection whatsoever.*

P/No 984 was registered under Mugwika Nabea and name corrected to read Paul Kigea Nabea. He had gathered several fragments totaling 72.58 acres. There is no correlation between P/No 984 and any of the parcels afore mentioned neither was it affected by any objection (1971). Attached are all relevant copie sof proceedings and register to verify the state oeac parcel. Ouro K. Obingo

District Land Adjudication and Settlement officer, Tiagania Eat District.

It was clear from the status report that the parcels of land the plaintiff was claiming except for parcel No. 524, which was registered under the name of Winfred Kageni Nkonge, were registered in the names of parties who the plaintiff had not enjoined in the suit. Regarding Parcel No. 810, it was established that vide A/R objection 3266 the plaintiff was awarded 5 acres which she admitted to have sold to one Joseph M'Ngai M'Tuamwari.

After receiving the status report I fixed the 4th day of December, 2014 as the date on which I would deliver the Ruling regarding the 3 applications heard on 5.6.2014. It comes as a surprise that the plaintiff has filed this application. I suspect that the plaintiff, by filing this application seeks to derail delivery of my ruling regarding the 3 applications heard on 5.6.2014.

The plaintiff has over time made unsubstantiated claims. I will just give some examples.

On 4.3.2014, the plaintiff wrote to the Resident Judge, Meru, asking her to issue orders in this matter. Of course, the Resident Judge's Court has, on judicial matters, no horizontal jurisdiction in juxtaposition to this Court and can not act as an appellate Court thereof.

On 31st March, 2014 she wrote to the Resident Judge, Meru, seeking that she orders me not to proceed with this matter. In a communication dated 9th October, 2014 she wrote a letter to the Resident Judge which contained outrageous, untrue and veritably preposterous allegations. The part of the said letter was in the following terms (All mistakes included):

Last page “I now demand Honourable court to order revoke the uncalled for proceedings on 8.10.2014 and Court do order Justice P. M. Njoroge Judge to allow application dated 21.7.2014 as not opposed and in future as indicated in the record shall not proceed with any other matter except the hearing of this application dated 21.7.2014 as Court orders must be obeyed by all parties,”

Last page: “Kindly judge as a woman note the frustration that was done to me before a Judge as being framed liar, a thief and a prostitute woman with Gideon Ikiao Laikuru someone who is more than 90 years and state counsel and Rungore hence before are below 40 years while I am over 50 years old. I shall take this matter seriously on them and request you to act to avoid such matters in High Court of

Kenya at Meru before 10.10.2014 became at 10.45 a.m. (sic) the judge took break of court and the 1st defendant Ouru K. Obingo, Rungore and the State Counsel proceeded to Judges Chamber through corridor between the lower court registry and High Court No. 3 in order to destroy my case and I witnessed this myself and I have key witnesses on this matter as they took 30 minutes inside Judges Chamber before 3.25 p.m. hearing of this matter.”

I opine that this paragraph contains pure lies and depicts the plaintiff as a incorrigible liar who can go to any length to traduce others.

Last page: If the Court orders is (sic) not issued shall go (sic) untold sufferings in this matter s title deeds shall be issued to irregular and illegal people who have used unprocedural means as indicated in the Director's letter.”

The Deputy Registrar, on behalf of the Resident Judge (vide a letter dated 16.10.2014) replied;

“RE: MERU HCCC NO. 253 OF 2013

YOURSELF – VS – DISTRICT LAND ADJUDICATION OFFICER

TIGANIA AND ATTORNEY GENERAL

We refer to the above matter and acknowledge receipt of your letter dated 9th October, 2014 addressed to the Resident Judge, Meru.

The Contents of your said letter have been noted by the Resident Judge who has instructed me to reply to you as hereunder:

That you are advised to appeal against the outcome of the case if you will be dissatisfied with the same when rendered.

Kindly, note that the Resident Judge does not have appellate powers over a court of concurrent jurisdiction such as the Environment and Land Court.

Yours faithfully,

Deputy Registrar

High Court of Kenya

MERU

Cc. The Resident Judge,

MERU

The Hon Judge

Environment & Land |Court,

MERU

It was after this communication that the applicant filed this application. It may have been intended to discombobulate and bamboozle this court to the effect that it is intimidated. This has not happened.

As I have already written my ruling regarding the 3 applications heard on 5.6.2014, I opine that this application has been filed too late in the day. I find that it veritably lacks merit. Even if I was inclined to disqualify myself from hearing this suit, the framing of the plaintiff's prayer includes a prayer I have no jurisdiction to handle this matter. The substantive prayer as reproduced at the beginning of this ruling reads: "That this honourable court do issue an order for Justice P. M. Njoroge Judge do (sic) disqualify himself from further hearing of this case as have (sic) complained to resident Judge Meru and to Chief Justice of Supreme Court of Kenya and on 21st November 2014 at Supreme Court of Kenya, was (sic) advised to make an application so that honourable court shall instruct another judge to hear the matter."

I do not have jurisdiction to instruct another judge in this or in any other matter. Having already said that this application lacks merit. It is hereby dismissed. I award costs to the respondents.

As I have dismissed the main suit in this case concerning the applications which were heard on 5.6.2014, I am, obviously *functus officio*. I will, therefore, have no chance to hear this case any longer.

In view of the plaintiff's propensity to traduce others with alacrity and veritable abandon, and to indulge her, I declare that I will not participate, for personal reasons, in any future proceedings, if they will be there, in which the plaintiff will be a party.

It is so ordered.

Delivered in Open Court at Meru this 4th day of December, 2014 in the presence of:

Cc. Arimi

Kieti for Defendants

Applicant not in Court

P. M. NJOROGE

JUDGE