



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 685 OF 2017 (OS)

(Formerly Machakos ELC No. 219 of 2012 (OS))

IN THE MATTER OF LAND REGISTRATION ACT 2012 SECTION 68 (II)

IN THE MATTER OF LAND PARCEL NUMBERS: KAJIADO/ KITENGELA/ 6137; KAJIADO/

KITENGELA/ 23949; KAJIADO/ KITENGELA/ 23450; KAJIADO/ KITENGELA/ 23951;

KAJIADO/ KITENGELA/ 23952; KAJIADO/ KITENGELA/ 23953

BETWEEN

DANIEL NGANGA NJOROGE.....1ST PLAINTIFF

JAMES GITEMA NJUGUNA.....2ND PLAINTIFF

VERSUS

LEMUTAKA OLE NITALEI.....1ST DEFENDANT

NKASHEMA OLE SADURU.....2ND DEFENDANT

GIDEON LAMUTAKA.....3RD DEFENDANT

JACOB MALIT.....4TH DEFENDANT

RULING

What is before Court for determination is the Plaintiffs' Notice of Motion dated the 24th June, 2020 brought pursuant to Order 45 (1) of the Civil Procedure Rules and Section 80 of the Civil Procedure Act where they seek the following orders:

a) That this honourable Court do vary/review and or amend its order from the Ruling delivered on 23rd April, 2020 and amend the typographical error on Order No. 2 to read as follows:

..... ' Kajiado Land Registrar directed to excise the Defendants 30 acres of land'

INSTEAD OF:

...Kajiado Land Registrar directed to excise the Plaintiffs 30 acres of land'

b) Costs be in the cause

The application is premised on the supporting affidavit of JAMES GITEMA NJUGUNA where he avers that he took the order issued on 29th April, 2020 to the Kajiado Land Registrar but the same could not be acted upon as there was a typographical error on the face of the order

which indicated that 30 acres to be excised from Plaintiffs' land whereas it should have stated that 30 acres to be excised from Defendants' land. He hence sought for the ruling to be amended and or rectified to reflect the correct position.

The Defendants opposed the application and filed a Notice of Preliminary Objection on the following grounds:

1. That this Honourable Court lacks the requisite jurisdiction to entertain the application and or grant the orders sought.
2. That the application offends the express provisions of Order 45 (6) of the Civil Procedure Rules as read together with Section 19(2) of the Environment and Land Court Act (No. 19 of 2011) and is otherwise an abuse of the court process.
3. That the Honourable Court is functus officio and the remedy (if any) available to the Applicant lies in the Court of Appeal.
4. That the Defendants/ Respondents pray that this application be dismissed with costs.

The Notice of Motion including the Notice of Preliminary Objection were canvassed through written submissions.

Analysis and Determination

Upon consideration of the instant Notice of Motion, Notice of Preliminary Objection, Supporting affidavit and rivalling submissions, the only issue for determination is whether the Order No. 2 in the Ruling delivered on 23rd April, 2020 should be review and or amended.

The Plaintiffs' in their submissions reiterated their claim above and provided the history of the claim herein including the judgement. They relied on the decision of **Thugi River Estate Limited & Another V National Bank of Kenya Limited & 3 Others (2015) eKLR** to support their averments.

The Defendants in their submission reiterated their opposition for that instant application as per the grounds on the Notice of Preliminary Objection. Further, they relied on the following decisions: **Equity Bank Limited V Neptune Credit Management Limited (2012) eKLR; Re: Estate of Fredrick Gitau Githumbi (Deceased) (2019) eKLR; Kigwe Limited V Njewar Academy (2018) eKLR and Mukisa Biscuits Manufacturing Company Ltd Vs West End Distributors** to support their arguments.

For the avoidance of doubt, I have proceeded to cite the final orders of the Judgement of this Court dated the 19th March, 2019 which forms the basis of the application herein that read as follows:

- 1. That by virtue of the Decree in the Kajiado Resident Magistrate Court Miscellaneous Application 4 of 2000, the Land Registrar, Kajiado be and is hereby directed to revoke titles to land parcels Kajiado/ Kitengela/ 23949, Kajiado/ Kitengela/ 23950, Kajiado/ Kitengela/ 23951, Kajiado/ Kitengela/ 23952, Kajiado/ Kitengela/ 23953 and the same reverted to the original parcel Kajiado/ Kitengela/ 6137.*
- 2. A Declaration be and is hereby made that the Plaintiffs are entitled to 30 acres of land out of land parcel number Kajiado/ Kitengela/ 6137.*
- 3. The Land Registrar Kajiado, be and is hereby directed to register the 1st and 2nd Plaintiffs as absolute proprietors of their respective portions of 20 and 10 acres respectively*
- 4. Costs of the suit are awarded to the Plaintiffs.*

The Plaintiffs sought to review the said Judgement as land parcel number KAJIADO/KITENGELA/6137 had already been subdivided and filed their application dated the 30th May, 2019, where they sought for the following orders:

- a) That this honourable Court do vary/review its decree from the judgement delivered on 19th March, 2019 and orders issued on 27th March, 2019 that the Kajiado Land Registrar do excise the Plaintiffs 30 acres from either the suit premises:*
 - i. KAJIADO/ KITENGELA/ 23949 – 8.09 Hectares*
 - ii. KAJIADO/ KTENGELA/ 23950 – 6.07 Hectares*
 - iii. KAJIADO/ KITENGELA/ 23951 – 18.18 Hectares*
- instead of KAJIADO/ KITENGELA/ 6137*

This is what culminated in this Court's Ruling dated the 23rd April ,2020 which is subject to the instant application that read in part as follows:

- a) The Decree from the Judgement delivered on 19th March, 2019 and Orders issued on 27th March, 2019 be and are hereby reviewed and the Kajiado Land Registrar directed to excise the Plaintiffs' 30 acres of land from either of the following suit premises:*

i. KAJIADO/ KITENGELA/ 23949 – 8.09 Hectares

ii. KAJIADO/ KTENGELA/ 23950 – 6.07 Hectares

iii. KAJIADO/ KITENGELA/ 23951 – 18.18 Hectares

instead of KAJIADO/ KITENGELA/ 6137.

As per the excerpt of the Judgement as well as this Court's Ruling which I have cited above, I note the Court in prayer No. 2 of the said Judgement specifically awarded the Plaintiffs' 30 acres of land. Further, in the aforementioned Ruling, this Court did not change the said Order and the Plaintiffs' were still entitled to their 30 acres of land which were to be excised from the resultant subdivisions of Kajiado/ Kitengela/ 6137 which have been enumerated as 23949; 23950 and 23951 still owned by the Defendants. To my mind, I do not see any error in the said Ruling and Order as it clearly indicates the Plaintiffs' 30 acres of land. I opine that the Land Registrar Kajiado should avoid issues of semantics by denying the Plaintiffs' their rights as determined by this Court and proceed to implement the said Decree as had been directed in prayer No. 3 of the Judgement dated the 19th March, 2019.

I further note that Order 45, rule 6 of the Civil Procedure Rules bars a Court from entertaining a subsequent application to review an Order made in an application for review by stipulating thus: **'No application to review an order made on an application for a review of a decree or order passed or made on a review shall be entertained.'**

I will hence decline to review and or amend the Ruling of this Court dated the 23rd April, 2020 as sought for by the Plaintiffs.

In the circumstance, I hence find the Notice of Motion application dated the 24th June, 2020 unmerited and will disallow it and proceed to uphold the Notice of the Preliminary Objection.

Since this application emanated from the fact that the Land Registrar Kajiado failed to implement the Court's Decree and Order and not from the fault of the Plaintiffs, I will direct that each party do bear their own costs.

Dated signed and delivered at Kajiado this 6th October, 2020.

CHRISTINE OCHIENG

JUDGE