



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 19 OF 2013

JOSEPH MUCHOE WANYAMA

(Suing for and on behalf of Members of

YUYA FARMERS CO-OPERATIVE

SOCIETY LTD.....PLAINTIFF

VERSUS

MERCIA MULIRO

(Suing as personal representative of

MASINDE MULIRO (Deceased).....DEFENDANT

RULING

1. The application dated **25/7/2019** and filed in court on the same date has been brought by the plaintiff. It seeks an order that this court do issue an order authorizing the OCPD Kachibora Police Station to evict any person found on the land Ref. **LR 11209 Sibanga Farm** as per decree in **SPMCC Land Case No. 12 of 2000**.

2. The grounds on which the said application is made are that a judgment in respect of land Ref. **LR 11209 Sibanga Farm** was pronounced on **23/2/2000** in favour of the plaintiffs vide **SPMCC Land Case No. 12 of 2000** ordering the defendant to transfer **201.7 acres** of the aforesaid land to the plaintiff; that no appeal was preferred against the said judgment; that **Mukasa Mwambu Muliro** the personal representative of **Masinde Muliro** (deceased) is leasing the property regardless of the court orders and that any litigation should in one way or another be brought to conclusion. It is said that granting of the application will not prejudice the respondent in any way.

3. The application is supported by an affidavit of the plaintiff dated **25/7/2019** which reiterates on the above grounds.

4. The defendant filed grounds of opposition on **16/9/2019** and a replying affidavit sworn by **Mukasa Mwambu Muliro**, on **2/10/2019** and opposed the application on the following grounds:

(1) The application is fatally defective.

(2) The application is misconceived and there are no grounds sufficient for the court to grant the orders sought.

(3)The application herein is statute barred and it is brought contrary to the Limitation of Actions Act.

5. In his replying affidavit filed on **2/10/2019** the respondent avers that this case is a consolidation of many cases; that he is the administrator of the estate of **Mercia Muliro** who was the administrator of the estate of **Masinde Muliro**; that since the death Mercia Muliro no representation has been raised to the estate of Masinde Muliro; that his capacity as the administrator of estate of Mercia Muliro does not entitle the plaintiff to engage him in these proceedings on behalf of the estate of Masinde Muliro as the estate of Mercia Muliro and Masinde Muliro are two different estates and the suit herein only concerns Masinde Muliro's estate; that the suit herein was dismissed on **20/2/2014**; that a notice of appeal was filed; that the appeal abated; that no orders can be obtained in favour of the applicant in this case and that the decree in **Kitale SPM Land Case No. 12 of 2000** is not enforceable.

6. The respondent prays that the application herein be dismissed with costs.

7. None of the parties filed any submission on the application as ordered by court on **11/11/2019**.

Determination

Issues for Determination

8. The main issue for determination in the instant application is whether an eviction order should issue as prayed. The decree sought to enforce is that in **Kitale SPMCC Land Case No. 12 of 2000**. A copy of that decree is attached to that affidavit. The definitive portion of that decree reads as follows:

“By judgment of this court dated 23/2/2000

It is ordered and decreed: That following the Kaplamai Land Disputes Tribunal formally filed in court on 9/2/2000 it is adopted as a judgment of this court as follows:

(1) That Mercia Muliro to give the members of Yuya Co-op. Society (Two Hundred and One point Seven (201.7) acres in IR 11209 Sibanga Farm or in alternative Four Hundred Ninety Thousand and interest for all those years

Dated at Kitale this 28th March, 2000.”

9. Those are the contents of the decree.

10. The application dated **25/7/2019** is filed in this case to wit **Kitale ELC No. 19 of 2013**. A further perusal of the file record in this case shows that a decree was extracted dated **12/1/2015** which indicates that this suit was dismissed. A further perusal of the record shows that a judgment was issued on **20/2/2014** by this court (Obaga J) dismissing the case with costs. Deeper into the record, a perusal reveals that this suit is what was formerly **Eldoret High Court Civil Case No. 38 of 2007** which was transferred to this court vide an order made by Munyao J after hearing the transfer application dated **17/12/2012**.

11. This is not therefore the file record in respect of **Kitale SPMCC Land Case No. 12 of 2000**. A perusal of the consent order dated **30/4/2013** consolidating several suits shows that **Kitale SPMCC Land Case No. 12 of 2000** was not one of them.

12. The land subject matter of the application is **LR No.11209 Sibanga Farm**.

13. In my view the application herein amounts to an application for execution of a decree in **Kitale SPMCC Land Case No. 12 of 2000** and should have been filed therein in that file record for hearing and determination by that court; the only application that may be made for execution in this file is that which may accord with the decree in this suit as per the judgment delivered on **20/2/2014**.

14. There is no good ground advanced why the application has been brought before this court. Besides in this court there is a judgment that states that the plaintiff's claim against Mercia Muliro in respect of **LR No. 11209 Sibanga Farm** or its monetary equivalent or alternatively a refund of **Kshs.490,000/=** with interest at commercial rate was dismissed by the court on **20/2/2014**, a date more recent than the date of the decree in **Kitale SPMCC Land Case No. 12 of 2000**. The prayers sought in the instant application are not in accord with the decree herein.

15. For the foregoing reasons I find that the application dated **25/7/2019** is incompetent. The same is hereby struck out with no orders as to costs.

Dated, signed and delivered at Kitale on this 9th day of December, 2019.

MWANGI NJOROGE

JUDGE

9/12/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the Respondent

Mr. Michoe for Applicant

COURT

Ruling read in open court.

MWANGI NJORGE

JUDGE

9/12/2019.