



Republic v District Land Adjudication Officer Makueni District & another; Mukilya (Exparte Applicant); Ndia (Interested Party); Munguti (Objector) (Environment and Land Judicial Review Miscellaneous Application 2 of 2017) [2024] KEELC 507 (KLR) (31 January 2024) (Ruling)

Neutral citation: [2024] KEELC 507 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION 2 OF 2017**

TW MURIGI, J

JANUARY 31, 2024

BETWEEN

REPUBLIC APPLICANT

AND

**DISTRICT LAND ADJUDICATION OFFICER MAKUENI DISTRICT 1ST
RESPONDENT**

**ARBITRATION BOARD NDUU ADJUDICATION SECTION 2ND
RESPONDENT**

AND

ONESMUS MUTUA MUKILYA EXPARTE APPLICANT

AND

TITUS MUNGUTI NDIA INTERESTED PARTY

AND

PHABIAN WAYUA MUNGUTI OBJECTOR

RULING

1. On 1st of February 2023, Phabian Wayua Munguti, the Objector herein filed an Objection to the Notice to show cause dated 10th January, 2023. The Notice to show cause sought for prohibitory orders to issue against title No. Makueni/Nduu956 Makueni/Nduu for attachment and sale to satisfy the decree herein.



2. The objector averred that she is the lawful wife of the Interested Party herein. She further averred that the properties described in the Notice to show cause i.e. Title Nos. Makueni/Nduu/956 and Makueni/Nduu/961 are ancestral land belonging to Ndia Muovya (Deceased). It is the Objector's case that the said parcels of land were bequeathed to the Interested Party to hold in trust for their children. That even though the said parcels of land are registered in the name of the Interested Party, he holds the same in trust for the Objector and their children. She contended that her children will suffer irreparably if the Court proceeds to issue prohibitory orders over the said parcels of land.

The Ex Parte Applicant's Case

3. In opposing the Objection, the Ex-parte Applicant filed a replying affidavit dated 14th March, 2023. He averred that the Objector's averment that she is the wife of the of the Interested Party and that the two parcels of land are held in trust for the Objector and her children was not supported by any evidence. He further averred that the two Title deeds are first generation titles and the registered owner thereof is the absolute owner.
4. He argued that the objection is meant to delay the execution proceedings since the Objector has no interest in the two parcels of land. In urging the court to dismiss the objection, the ex parte Applicant contended that litigation must come to an end so as to allow him to enjoy the fruits of his judgment. Lastly, the *Ex-parte* Applicant asserted that the objection ought to be dismissed in the interest of justice.
5. In her further affidavit sworn on 15th May, 2023, the Objector reiterated the contents of her earlier affidavit. She annexed a copy of a letter from the Area Chief indicating that she is the wife to the Interested Party and a confirmation from Akitutu clan.
6. The objection was canvassed by way of written submissions.

The Objector's Submissions

7. The Objector's submissions were filed on 15th May, 2023. On her behalf, Counsel submitted that the letter from the Area Chief clearly confirms that the Applicant is the lawful wife of the Interested Party. Counsel further submitted that the Objector had adduced evidence to demonstrate that the two parcels of land are ancestral land.
8. Relying of the provisions of Order 22 Rule 51 (1) of the *Civil Procedure Rules*, 2010, Counsel submitted that the Objector had proved on a balance of probabilities that the subject properties are held in trust and thus, cannot be attached in execution of the decree herein.

The Exparte Applicant/respondent's Submissions

9. The Ex-parte Applicant/Respondent filed his submissions on 2nd June, 2023. On his behalf, Counsel submitted that the Objector would have sought to be joined in the proceedings during the trial if she had any stake in the subject properties. Counsel contended that the objection has been raised to defeat the execution proceedings. Counsel submitted that an official search of the subject properties was conclusive proof as to the ownership of Titus Munguti Ndia, the Interested Party herein.
10. Counsel further contended that the Objector's argument that the subject properties are ancestral land held in trust for her and her children was far-fetched and misleading to the Court. Counsel reiterated that the Objector is a busybody without any interest in the execution proceedings and that the Ex-parte Applicant must be allowed to enjoy the fruits of his judgment. Counsel urged the Court to strike out the objection for want of merit.



Analysis and Determination

11. Having considered the objection, the response thereto and the rival submissions the issue that arises for determination is whether the Objector is entitled to the orders sought
12. The record shows that the Notice to show cause dated 10th January, 2023 was issued to the Interested Party herein. The properties listed for the execution proceedings are Title Nos. Makueni/Nduu/956 and Makueni/Nduu/961 situated in Nduu Adjudication Section within Kilungu Sub- County.
13. The law governing objection to attachment of property in execution of a decree is outlined under Order 22 Rule 51 of the *Civil Procedure Rules*, 2010 which provides as follows: -
 1. Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.
 2. Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.
 3. Such notice of objection and application shall be served within seven days from the date of filing on all the parties.
14. It is clear from the above provisions that the notice should be accompanied by an application supported by an affidavit setting out the nature of the objector's claim. The notice and the application should be served within seven (7) days on all parties.
15. The Objector commenced the instant proceedings by way of an affidavit of objection. This Court has not been moved vide an application and a supporting affidavit as per the mandatory provisions of Order 22 Rule 51 (2) of the Civil Procedure Rules, 2010.
16. The objection proceedings herein fall short of the procedural requirement for want of compliance with mandatory legal provisions. Be that as it may, no issue was raised as to non-compliance with procedure as the Respondent filed a replying affidavit.
17. Article 159 and Section 19(1) of the *Environment and Land Court Act* enjoins the court to administer justice without undue regard to procedural technicalities.
18. In the matter at hand, the Objector alleged that Land Parcels Numbers Makueni/Nduu/956 and Makueni/Nduu/961 are ancestral land belonging to the late Ndia Muovya. She asserted that the Interested Party was holding the same in trust for their children. In her further affidavit, the Objector annexed a letter from the area chief which confirmed that she is the wife of the Interested Party and a confirmation of Titus Ndia Family tree from Akitutu Council of Elders. The said confirmation does not state that the said parcels of land belong to Ndia Muovya or that the same are held in trust by the Interested Party. In fact, the confirmation does not make any mention of the subject properties herein. The Objector did not present any evidence to show that the subject properties are ancestral and.
19. In the end I find that the objection is devoid of merit and the same is dismissed with costs.

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HON. T. MURIGI

JUDGE



RULING DELIVERED DATED AND SIGNED VIA MICROSOFT TEAM THIS 31ST DAY OF JANUARY 2024.

In the presence of:-

Nzioki for the Applicant

