



African Orthodox Church of Kenya Registered Trustees & another v Orthodox Archbishopric of Kenya and Irinoupolis Limited & another (Environment & Land Case 525 of 2015) [2024] KEELC 1129 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEELC 1129 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 525 OF 2015
JO MBOYA, J
FEBRUARY 29, 2024**

BETWEEN

AFRICAN ORTHODOX CHURCH OF KENYA REGISTERED TRUSTEES 1ST PLAINTIFF

NICHOLAS MUKOMA GACHEGE, MOSES NGUGI GICHUHI , PETER NG'ANG'A MICHARA & FRED KAGO KABUCHI (SUING FOR AND ON BEHALF OF THE AFRICAN ORTHODOX CHURCH OF KENYA) 2ND PLAINTIFF

AND

ORTHODOX ARCHBISHOPRIC OF KENYA AND IRINOUPOLIS LIMITED 1ST DEFENDANT

ORTHODOX TOWERS MANAGEMENT COMPANY LIMITED 2ND DEFENDANT

RULING

Introduction and Background

1. The instant Application [which is dated the 6th of February 2024], is premised on the grounds which have been enumerated at the body thereof and same has sought for the following reliefs [verbatim];
 - i. This Application be certified urgent and be heard on priority basis and Ex-parte in the first instance.
 - ii. This Honourable court be pleased to order that the Deputy Registrar of this Honourable court do execute all Land Transfer documents/ Instruments in favour of the 1st Plaintiff/ Applicant for land parcels;



- a) Dagoretti/ Riruta / 1093,
- b) Dagoretti/Kangemi/ 372.
- c) Dagoretti/Kinoo /T . 377.
- d) Dagoretti /Ruthimutu / 5 0 1,
- e) Kiambu/Lari/ 697.
- f) Dagoretti /Kinoo / T. 570.
- q) Gilgil /Gilgil/ Block 1/ 7279.
- h) Gilgil /Karunga Block 3/604
- i) Kapomboi/Kolongolo Block I / Kiriita/ 14.
- j) Loitokitok/Endonet. / 666,
- k) Loitokitok/Entarara/ 673.
- f) Kajiado/Kitengela/ 19530
- m) Kaj iado/EwasoKendong / 3364,
- n) Kaj iado/EwasoKedong /1662
- o) Ruguru/Gachika / 973.
- p) Ruguru/Gachika / 987.
- q) Kanyamkago/Ka Were II/3442,
- r) Kanyamkago/KaWere II / 3443.
- s) SouthMugirango /2375
- t) Kakamega / Ivora/ 478.
- u) Kakamega/Chamakanga / 461
- v) N/Maragoli/Lusenge li/ 915.
- w) w/Bunyore/Ebusak amt / 269,
- x) Tiriki /Gtsamba i/ 1530 ,
- y) Tiriki /Gisambai /1626,
- z) NaivashaMaraigushuBlock4 / 432,
- aa) Nyandarua/Kahuru/2123.
- bb) Kijabe /Kijabe/ Block 1/ 3726,
- cc) Karai/Gikambura/1332,
- dd) Laikipia/Kinamba mwenje/ Block 1/ 3110.
- ee) Laikipi a/Lariak /289,



- ff) Miti-Mingi/Mbaruk Block 5 / 443,
 - gg) Bahati/ kabatini Block 1/6229.
 - hh) Bahati/ Kabatini Block 1/ 6230.
 - ii) Suna East/ Manyatta/ 2028.
 - iii. Costs of the Application be provided for.
2. The Application is supported by the affidavit of one Mr. Arthur Ingutia, who is the Learned counsel on record of the 1st Plaintiff/Applicant.
 3. Upon being served with the subject Application, the Defendant/Respondent filed a Replying Affidavit sworn by one Andreas Makarios Tillyrides; sworn on the 16th February 2024; and in respect of which same has annexed three [3] sets of documents.
 4. Suffice it to point out that the instant Application came up for hearing on the 22nd February 2024; whereupon the advocates for the respective Parties covenanted to canvass and ventilate the Application by way of oral submissions.
 5. Pursuant to and at the instance of the advocate of the respective Parties, the Honorable court proceeded to and circumscribed timelines for the highlighting of oral submissions, for and in opposition to the subject Application.

Parties' Submissions:

a. Applicant's submissions:

6. The Applicant herein adopted and contained the grounds contain at the foot of the Application, as well as the grounds averred in the body of the Supporting affidavit. Furthermore, the Applicant raised, canvassed and highlighted five [5] issues for consideration by the court.
7. Firstly, Learned counsel for the Applicant has submitted that the Honorable court issued and granted orders as pertains to the transfer and registration of the suit properties in favor of the 1st Plaintiff/Applicant herein.
8. Nevertheless, Learned counsel for the Applicant has submitted that despite the explicit terms of the orders of the court, the Defendant/Respondents herein have failed and/or neglected to execute the requisite Transfer Instrument with a view to effecting the transfer and registration of the suit properties in favor of the 1st Applicant, either in accordance with the decree of the court or at all.
9. Arising from the foregoing, Learned counsel for the Applicant has submitted that the court is therefore obligated to invoke the provisions of Section 98 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya; and to decree that the Deputy Registrar of the Court does execute the requisite transfer instrument to facilitate the transfer and registration of the suit properties in favor of the Plaintiff/Applicant herein.
10. Secondly, Learned counsel for the Applicant has submitted that the terms of the Judgment, which was issued by the court have neither been varied, challenged and/or otherwise reviewed; and hence, no legal basis exists to bar the implementation and/or enforcement of the orders that were issued by the Honorable court.
11. Thirdly, Learned counsel for the Applicant has submitted that the terms of the court order, which underpin the current Application are clear, explicit and unequivocal. In this regard, Learned counsel



has contended that the court is thus obligated to facilitate the realization and implementation of the court orders.

12. In support of the foregoing submissions, Learned counsel for the Applicant has cited and relied on, *inter-alia*, the case of *Shirji Naran Virji v Oglu Jemeli Bhargatuny* (2021)eKLR; and *William Juma Mbue v Public Trustees & Another* (2019)eKLR, respectively.
13. Premised on the foregoing, Learned counsel for the Applicant has therefore implored the Honourable court to find and hold that the grant of the orders under reference shall go along way towards actualization of the Right to Access to Justice, which is fundamental into the realization of the lawful Judgments and decrees of the court.

b. Respondent's submissions:

14. Learned counsel for the Respondent has adopted and reiterated the contents of the Replying affidavit sworn on the 16th February 2024; and thereafter highlighted Three [3] pertinent issues for consideration by the Honorable court.
15. First and foremost, Learned counsel for the Respondent has submitted that the instant Application has been supported by an affidavit sworn by Learned counsel for the Applicant; and hence the Application beforehand, is contended to be fatally incompetent and thus invalid.
16. Furthermore, Learned counsel for the Respondent has submitted that the advocates for the Applicants herein cannot arrogate unto himself the authority of the client and thereafter proceed to depone to contested issues of Evidence, contrary to and in contravention of the Provisions of Order 19 Rule 3 of the *Civil Procedure Rules*, 2010.
17. Secondly, Learned counsel for the Respondent has also contended that the affidavit in support of the subject Application is also incompetent insofar as the Jurat of the said affidavit is contained on a separate and distinct page, which renders the affidavit invalid.
18. To the extent that the Jurat of the affidavit is contained on a separate and distinct page, Learned counsel for the Respondent has submitted that the entire affidavit and by extension, the Application, are therefore vitiated and rendered illegal.
19. Thirdly, Learned counsel for the Respondent has submitted that the instant Application, which is supported by the affidavit of Learned counsel for the Applicant, has been mounted and made without the authority and/or instructions of the client.
20. Arising from the foregoing, Learned counsel for the Respondent has therefore contended that the subject Application constitutes and amounts to an abuse of the due process of the court, insofar as same has been propagated by an advocate without the requisite instructions and [sic] authority of the client.
21. In view of the foregoing, Learned counsel for the Respondents has therefore invited the court to find and hold that the Application beforehand is not only misconceived, but same is devoid of merits and thus ought to be dismissed with costs to be borne by Learned counsel for the Applicant.

Issues for Determination:

22. Having reviewed the Application beforehand and the Response thereto; and upon taking into consideration, the oral submissions ventilated for and on behalf of the respective Parties, the following issues do arise [emerge] and are thus worthy of determination;



- i. Whether Learned counsel on record for the Plaintiff/Applicant has the requisite authority and instructions to mount the subject Application.
- ii. Whether the Honorable court is seized of the requisite Jurisdiction to grant the orders sought and if so; whether the orders sought are merited.

Analysis and Determination

Issue Number 1: Whether Learned counsel on record for the Plaintiff/Applicant has the requisite authority and instructions to mount the subject Application.

23. Learned counsel for the Respondent has invited the court to find and hold that the advocate for the Applicants herein was not seized of the requisite instructions and/or authority to file and /or mount the instant Application. In this regard, Learned counsel for the Respondents has thus implored the court to find and hold that the Application beforehand is misconceived and legally untenable.
24. Furthermore, Learned counsel for the Respondent has also contended that the Registered Trustees of the 1st Plaintiff/Applicant, who instructed the Applicants' advocate at the onset, have since died and/or passed on.
25. Further and in any event, Learned counsel for the Respondent has submitted that following the death of the 2nd Plaintiff herein, a new set of Registered Trustees were appointed and same have contended that the application beforehand was neither authorized nor sanctioned by themselves. Instructively, Learned counsel for the Respondent has thereafter invited the Honourable court to take cognizance of the letter dated the 14th February 2024; annexed to the Replying affidavit.
26. Despite the contention by and on behalf of the Learned counsel for the Respondent, there is no gainsaying that the firm of M/s Arthur Ingutia & Company Advocates was duly instructed and retained by the Plaintiffs herein and thereafter same [law firm of Arthur Ingutia & Company Advocates] proceeded to and crafted the pleadings beforehand.
27. Subsequently, the said firm prosecuted the matter up to and including the rendition of the Judgment. In any event, there is no gainsaying that the firm of M/s Arthur Ingutia & Company Advocates are still on record as the recognized agents on behalf of the Applicants herein. [See Order 9 Rule 1 of the [Civil Procedure Rules](#), 2010].
28. Other than the foregoing, it is also not lost on this court that despite the contestation by Learned counsel for the Respondents, no Notice of change of advocate has ever been filed and/or lodged in respect of the instant matter, so as to divest the law firm of M/s Arthur Ingutia & Company Advocates of the authority and mandate to act on behalf of the Applicant.
29. Suffice it to point out that where an advocate has been instructed and or retained in a matter, same is deemed to be vested with and seized of the requisite authority to act for and on behalf of the designated client up to and including when same is lawfully replaced in accordance with the provisions of Order 9 of the [Civil Procedure Rules](#), 2010.
30. Furthermore, for as long as the law firm of M/s Arthur Ingutia & Company Advocates remains on record, same are deemed to be seized of the ability to prosecute the suit on behalf of the client and even to compromise such a suit, albeit on terms. [See the holding in the case of [Flora N. Wasike v Desterio Wamboko](#) [1988] eklr.]
31. In a nutshell, my answer to issue number one [1] is to the effect that the law firm of M/s Arthur Ingutia & Company Advocates; remains lawfully on record for the Applicant and are thus authorized and



mandated to execute the affidavit on behalf of the client for as long as same does not advert to evidential issues which are in controversy.

Issue Number 2

Whether the Honorable court is seized of the requisite Jurisdiction to grant the orders sought and if so; whether the orders sought are merited.

32. It is common ground that the dispute before hand was referred to Mediation with the consent and/or concurrence of the Parties and thereafter the Mediator procured and generated an agreement which was duly executed and sanctioned by the respective Parties. For coherence, the Mediation Report is dated the 5th July 2020.
33. Subsequently, the Mediation Report by and on behalf of the mediator was placed before the court in accordance of the provisions of Section 59 of the Civil procedure Act, Chapter 21, Laws of Kenya; culminating into the adoption and ratification thereof.
34. Suffice it to point out that upon the adoption of the mediation agreement, same became a Judgment of the court; and hence the Parties were obliged and obligated to comply with and/or adhere with the terms thereof.
35. Pertinently, the terms and tenor of the Judgment which was deduced from the mediation agreement called upon the Defendant/Respondent herein, to execute the Transfer instrument [s] and thereafter effect the transfer of the suit properties to and in favor of the 1st Plaintiff/Applicant.
36. Suffice it to point out that the terms of the Judgment of the court, [which arose from the mediation agreement], have neither been challenged, impugned and/or reviewed. Consequently, the terms of the said Judgment remain valid, lawful and binding.
37. Notwithstanding the foregoing, it is evident that the Defendants/Respondents herein, who were privy to and/or knowledgeable of the terms of the Judgment, have failed and/or neglected to comply with and/or adhere to same. In this regard, the suit properties have neither been transferred to nor registered in the name of the Plaintiff.
38. Be that as it may, it is imperative to point out and underscore that court orders are never generated and/or made for cosmetic purposes. To the contrary, the court orders are made to be complied with and/or adhered to by all and sundry, the Defendant/Respondent not excepted.
39. Premised on the foregoing, it was incumbent upon the Defendants/Respondents to proceed and execute the requisite transfer instrument over and in respect of the suit properties; and thereafter, facilitate transfer and registration thereof in favor of the 1st Plaintiff/Applicant.
40. However, there is no gainsaying that the Defendants/Respondents have neglected to comply with the terms and tenor with the orders of the court and in this regard, the Applicant has therefore sought the intervention of the Honourable court by dint of Section 98 of the Civil Procedure Act, Chapter 21, Laws of Kenya.
41. To my mind, the provisions of Section 98 of the Civil Procedure Act, [Supra], vests and/or confers in this Honorable court the requisite Jurisdiction to order and/or direct the Deputy Registrar to execute the transfer of the suit properties with a view to facilitating the enforcement and/or implementation of the orders of the court.
42. Simply put, where a Judgment debtor remains adamant and or ambivalent like in the instant case, the court is mandated to intervene. Consequently and in this regard, I find and hold that the court



herein is obligated to facilitate the realization of the orders of the court in pursuance of the Provisions of Section 98 of the [Civil Procedure Act](#), Chapter 21, Laws of Kenya; as well as, in pursuit of the Inherent Jurisdiction of the Court. [See the holding of the Supreme Court in the case of [Narok County Government v Livingstone Kunini Ntutu](#) [2018] eKLR]

Final Disposition:

43. From the foregoing exposition, it must have become crystal clear that the Application beforehand, [which essentially seeks the enforcement and implementation of the terms of the Judgment of the court], is meritorious.
44. Consequently and in the premises, the Application dated the 6th February 2024; be and is hereby allowed in terms of prayer 2 thereof; which essentially, highlights the various properties to be transferred and registered in the name of the First Plaintiff/ Applicant.
45. For coherence, the Deputy Registrar is hereby mandated and authorized to execute the requisite Transfer Instrument[s] and documents to facilitate the transfer and registration of the suit properties to and in favor of the 1st Plaintiff/Applicant.
46. As concerns costs of the Application, same be and are hereby awarded to the Plaintiff/Applicant and in any event, such costs shall be agreed upon; and in default, to be taxed by the Taxing Officer, albeit in the usual manner.
47. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29th DAY OF FEBRUARY 2024.

OGUTTU MBOYA,

JUDGE.

In the Presence of:

Benson - Court Assistant.

Mr. A K Mwangi h/b for Mr. Arthur Ingutia for the Applicant.

Ms Christine Githii for the Defendant/Respondents.

