



REPUBLIC OF KENYA



**Omakada v Etyang (Environment & Land Case 30 of 2002)  
[2024] KEELC 856 (KLR) (21 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 856 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 30 OF 2002  
FO NYAGAKA, J  
FEBRUARY 21, 2024**

**BETWEEN**

**WILLIAM WASHINGTON OMAKADA ..... PLAINTIFF**

**AND**

**JOHN WANYONYI ETYANG ..... DEFENDANT**

**RULING**

1. The Defendant/Applicant brought the instant Application dated 01/04/2023. He did so under Sections 1A, 1B, 3 and 3A of the Civil Procedure Act and Order 51 of the Civil Procedure Rules. He sought the following Order:-
  1. That this Honourable Court be pleased to direct the Land Registrar, Trans Nzoia County to issues a fresh title deed for land parcel number Trans Nzoia/Maridadi/538, in favour of the Defendant/applicant.
  2. ...Spent
  3. That costs of be provided for.
2. The Application was based on the ground that the Defendant/Applicant is in full use and possession of the parcel of land and the title deed issued to the Plaintiff was cancelled. The Application was supported by the Affidavit sworn by the Defendant on the same date as the Application. In it he deponed that vide the judgment delivered on 23/12/2014 this Court cancelled the titled deed issued in favour of the Plaintiff; that one Francis Kiprotich Tuwei had transferred the title deed fraudulently to the Plaintiff/ Respondent; that the Applicant now wished to be issued with a title deed in his name.
3. The Application was opposed by the Affidavit of the Plaintiff. He stated that the application was frivolous, vexatious and an abuse of the process of the Court; that it was made against the terms of the decree issued pursuant to the judgment of the court and delivered on 23/12/2014; that by the said



- judgment the Court dismissed both the suit and counterclaim; that the Court was functus officio; that the decree which he annexed as WW01 was elaborate and the Defendant was at liberty to make a fresh application for the registration of the suit land subject to the goodwill of the original owner, one Francis K. Tuwei; that the orders sought could not obtain; the application was a non-starter.
4. The Respondent filed written submissions while the Applicant did not. But in addition to the Respondent's written submissions, both parties opted to highlight the submissions orally. In the written submissions dated 13/11/2023, the Respondents summarized the application and the reply thereto. Then he summarized the content of the decree which was to the effect that "... the Defendant/Applicant who is in occupation of the land is at liberty to make a fresh application for the registration of the land in his name subject to the goodwill of the owner that is Francis Kiprotich Tuwei Bor or Francis Bor."
  5. His further submission was that in the circumstances the Court did not have jurisdiction to hear and determine the Application. He stated that the reason was that the court heard the matter and concluded it and politely implored the applicant to pursue the owner to whom the title reverted. He relied on the case of *Brian Muchiri Waibanya v Jubilee Hauliers & Another (Geminia Insurance Interested Party)* (2018) eKLR which is on all fours about functus officio and that once done a court cannot review its orders.
  6. He relied also on the case of *Telkom Kenya v John Ochanda & others* (2014) e KLR and *Dinesh Construction Company Limited v Kenya Sugar Research Foundation* (2021) e KLR. He submitted that no order was made in favour of the Defendant to enable him seek the transfer of the land to himself hence there was no basis to grant the orders sought. Further he relied on the case of *Asige Keverenge And Anyanza Advocates v KRA & Another* (2021) e KLR.
  7. In the oral submissions learned counsel for the Plaintiff added that the Court was functus officio since both the Counterclaim and suit were dismissed hence the Applicant was to liaise with the family of the original owner. On the contrary learned counsel for the applicant submitted that the it was not true as the Plaintiff submitted but that the Plaintiff's title was cancelled and in effect the Defendant was supposed to be issued with a fresh title in his name.
  8. This Court has considered the Application, the facts and the law. In essence the application is one designed to give effect to the decree of this Court. Therefore, the Court has to examine the judgment of the Court and the decree issued pursuant to it in order to determine its import and relation to the instant application.
  9. The judgment delivered on 23/12/2014 held that the title which was in the name of the Plaintiff be cancelled forthwith. This followed the transfer of the suit parcel of land to him by the original seller and the subsequent registration of the same but which the Court found to have been done through a fraudulent scheme. The learned judge went on to state that the register be rectified accordingly. Further, the judge went on to give the manner in which the same would be done, and it was that the Defendant was "...at liberty make a fresh application for registration of the land in his name subject... to the goodwill of the original owner..."
  10. What was the import of the judgment in the part where it required the Defendant to make a fresh application for registration? It all boils down to how applications for registration of land in individuals or companies or other entities are made depending on whether they involve controlled transactions under Chapter 302 of the Laws of Kenya or other steps as required by the registration regimes pertaining to the transaction in issue. In my humble view this was what was required of the Defendant to do. It cannot be through an application of the nature of the one before me now. As such I agree with the Plaintiff/Respondents' submission that to the extent that the Applicants wants this Court



to grant the orders sought and not following the procedure advised by the judge, the Court is functus officio. The authorities relied on by the Respondent are relevant: I need not rehash their holdings here. Moreover, in my view, the learned trial judge was alive to the fact that the individual who should have transferred the suit land to the Defendant by virtue of his occupation thereof was the original seller. That was why he advised that the Defendant contacts him for signing of the registration documents.

11. As things stand, if this Court were to grant the orders sought, it would be directing the Land Registrar who was not a party to this suit to issue a title deed yet he was not part of the scheme that led to the issuance of the title cancelled. It is clear beyond imagination that the suit and counterclaim were between the Plaintiff and the Defendant and vice-versa. The upshot is that the Application is without merit. It is dismissed with no order as to costs. This file should be returned to the registry for storage and archiving.
12. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 21<sup>ST</sup> DAY OF FEBRUARY 2024.**

**HON. DR. IUR FRED NYAGAKA**

**JUDGE, ELC KITALE**

