



Njoroge & 2 others v Lesaloi & 5 others (Environment & Land Case 743 of 2017) [2024] KEELC 760 (KLR) (19 February 2024) (Ruling)

Neutral citation: [2024] KEELC 760 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 743 OF 2017
MN GICHERU, J
FEBRUARY 19, 2024**

BETWEEN

**MOSES CLEMENT MUHIA NJOROGE 1ST PLAINTIFF
JACINTA NYAMBURA MBURU 2ND PLAINTIFF
JAMES NDUNGU KINYANJUI 3RD PLAINTIFF**

AND

**JANE WAITHERA LESALOI 1ST DEFENDANT
JOSEPH GATHAGU KAGIKA 2ND DEFENDANT
ANDRIAN MURITHI 3RD DEFENDANT
JOHN GITAU KIOI 4TH DEFENDANT
THE DISTRICT LAND SURVEYOR, KAJIADO 5TH DEFENDANT
THE DISTRICT LAND REGISTRAR, KAJIADO 6TH DEFENDANT**

RULING

1. This ruling is on the notice of motion dated 19/9/2023. The motion which is by the third defendant is brought under Order 22 of the Civil Procedure Rules, Sections 1A, 1B, 3A, 38, 63 and 98 of the [Civil Procedure Act](#), Articles 50 and 159 of [the Constitution](#) together with any other enabling provisions of the law.
2. The motion seeks the following orders.
 1. That the District Surveyor to go to the ground and carve out two (2) acres from Ngong/Ngong/48197 and to issue the third defendant with a new parcel number for the same.



2. That the Deputy Registrar to sign and execute all the prerequisite documents for the swift transfer of L.R. 48197.
3. That the costs of this application be in the cause.
3. The motion is supported by six grounds, an affidavit sworn by the applicant and three annexures, the gist of which is as follows.

Firstly, on 2/11/2022, this court entered judgment in favour of the applicant and the second and fourth defendants.

Secondly, the said judgment validated the decree issued on 4/1/2011 in Land Dispute Tribunal Case No. 77 of 2010 which was to the effect that the two acres be carved off the bigger land and be registered in the name of the applicant.

Thirdly, the first defendant has proved to be uncooperative in signing the land transfer documents and continues to frustrate the third defendant.

Finally, unless the court issues the orders sought, the applicant will never enjoy the fruits of the judgment.

4. The motion is opposed by the three Plaintiffs and the first one has sworn a replying affidavit dated 19/10/2023 in which he replies as follows. The decree cannot be implemented for the following reasons.

Firstly, restoring title no. Ngong/Ngong/48197 to its original form will result in the cancelling of thirty (30) other subdivisions that were not part of the suit land.

Secondly, there is a live appeal (C.A. No. E243 of 2023) against the judgment and decree given on 2/11/2022 and the implementation of the decree herein will render the said appeal nugatory.

5. I have carefully considered the motion in its entirety including the affidavits, annexures and the grounds. Submissions were to be filed and served by 20/12/2023 and by the time the court went on recess on 22/12/2023, no such submissions had been filed. I am writing this ruling without the submissions by the learned counsel for the parties. I find that the motion has merit for the following reasons.

Firstly, the applicant has been in occupation of the suit land for many years. None of the plaintiffs is in occupation of the suit land. The plaintiffs have nothing to lose considering that the court ordered that they get a refund of the purchase price from the first defendant.

Secondly, an application for stay of execution was dismissed on 18/5/2023. The stay of execution which was sought by the plaintiffs having been refused by this court, nothing now stands in the way of the execution of the decree in favour of the second, third and fourth defendants.

Thirdly, the third defendant is not seeking to alienate the land but to simply transfer it to himself, as was the intention of the seller Job Ole Kango in the eighties. Since the land is immovable, in the event that the plaintiffs succeed in the pending appeal, it will be available to them.

Fourthly, a proper reading of the judgment dated 2/11/2022 will show that prayer 2 of the motion was one of the prayers granted in the judgment. The court allowed



the implementation of the decree of the Land Disputes Tribunal when it allowed the counterclaims by the second, third and fourth defendants.

For the above stated reasons, the motion is allowed in its entirety.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 19th Day of February 2024.

M.N. GICHERU

JUDGE

