



**Gwaro v Yoge & 2 others (Environment & Land Case 352 & 459 of 2013 (Consolidated)) [2024] KEELC 1318 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1318 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 352 & 459 OF 2013 (CONSOLIDATED)**

**M SILA, J**

**MARCH 12, 2024**

**BETWEEN**

**PETER JUNIOR GWARO ..... PLAINTIFF**

**AND**

**WILFRED MONYENYE YOGЕ ..... DEFENDANT**

**AS CONSOLIDATED WITH**

**ENVIRONMENT & LAND CASE 459 OF 2013**

**BETWEEN**

**PETER JUNIOR GWARO ..... PLAINTIFF**

**AND**

**WILFRED MONYENYE YOGЕ ..... 1<sup>ST</sup> DEFENDANT**

**JOHN GWARO ..... 2<sup>ND</sup> DEFENDANT**

**ROSE MORAA NYANGAU ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

(Application seeking costs of withdrawn suit; application filed out of time but even on the substance of it no merit in the application; application dismissed)

1. This ruling is in respect of an application dated and filed on 13 October 2023 by Wilfred Monyenye Yoge, who is the sole defendant in the suit Kisii ELC No. 352 of 2013 and the 1<sup>st</sup> defendant in the suit Kisii ELC No. 459 of 2013. He seeks costs of the two suits which were withdrawn.



2. There are two consolidated suits. The first, Kisii ELC No. 352 of 2013, was filed on 21 August 2013, where Peter Junior Gwaro sued the applicant on the allegation that on 16 August 2013, the applicant went to the land parcel Nyaribari Chache/B/B/Boburia/7751, and disrupted some persons who were licenced by the plaintiff to be on the land. He wanted him restrained from the land and to pay damages for trespass.
3. The suit Kisii ELC No.459 of 2013 was commenced through a plaint dated 15 November 2013. The plaintiff filed suit against the applicant, John Gwaro and Rose Moraa Nyangau. He pleaded that he was the proprietor of the land parcel Nyaribari Chache/B/B/Boburia/7751 which was registered in his name on 29 August 2006. This land resulted from a subdivision of the parcel Nyaribari Chache / B/ B/ Boburia /2904 which was in the name of Grace Nyanchama Gwaro who after subdividing it transferred the parcel No. 7751 to the plaintiff. The plaintiff sued the defendants on the allegation that they wished to inter the body of one Samwel Gwaro (deceased) who died on 9 November 2013, on his land. The said Samwel Gwaro was pleaded to be the husband of the 3<sup>rd</sup> defendant and nephew of the 1<sup>st</sup> defendant. In the suit he wished to have a declaration that he is the owner of the land parcel No. 7751 and a permanent injunction to restrain the defendants from interring the body of Samwel Gwaro on the said land. Together with the suit the plaintiff filed an application for injunction to stop the burial of Samwel Gwaro on the suit land. The position of the defendants was that Samwel Gwaro was a son of Joseph Lucas Gwaro (deceased) who owned the land parcel No. 2904. It was said that Lucas Gwaro had three wives, with the last of his wives being Grace Nyanchama Gwaro. It was further contended that Grace Nyanchama had unilaterally filed a succession cause in respect of the late Lucas Gwaro and wrongfully obtained a grant which she used to subdivide and distribute the land parcel No. 2904 and that she failed to provide land to the late Samwel Gwaro and left him landless. It was said that there was an application pending for the revocation of the grant so that the estate may be redistributed.
4. The application for injunction was heard by Okong'o J who delivered ruling on 3 December 2013. He granted the order of injunction as prayed pending hearing and determination of the suit or until further orders of the court in Kisii High Court Succession Cause No. 302 of 1995 where there was the pending application for revocation of grant.
5. The suits did not proceed as they were held in abeyance until disposal of the challenge in the succession cause. On 25 July 2023, it was mentioned before me that a ruling in respect of the succession cause has been delivered and that the grant used to subdivide the land was nullified. Mr. Mulisa learned counsel for the plaintiff stated that in light of that development he had instructions to withdraw the suits. There was no objection to the withdrawal of suits but the defendants asked for costs. I marked the suits as withdrawn and directed any party seeking costs to file an application within 14 days or else the suits be deemed as withdrawn with no orders as to costs.
6. This application was subsequently filed by the 1<sup>st</sup> defendant in the suit Kisii ELC No. 459 of 2013, and the defendant in the suit No. 352 of 2013. He avers that he incurred costs arising from the suits and deserves costs.
7. In reply, the plaintiff avers that the hearing of his two suits were stayed pending outcome of the succession matter. He avers that his suits came to be overtaken by events after a decision was made in the succession cause nullifying the grant and it will be futile hearing the suits. He has also pointed out that this application was filed outside the 14 days given on 25 July 2023.
8. I have considered the application and the submissions filed.
9. At the outset I agree with the submissions of counsel for the plaintiff that this application is out of time. I had ordered that if no application is filed within 14 days of 25 July 2023, then the suits herein



will be marked as withdrawn with no orders as to costs. The order made on 25 July 2023 was self-executing, and from it, it follows that the suits are withdrawn with no orders as to costs.

10. Even if I was to consider the application on merits, I would still dismiss it for it does not persuade me that costs ought to be awarded in this case. First, this is a case involving family members and in the circumstances of the suits I wouldn't wish to burden anybody with costs. Secondly, the plaintiff's suit came to be overtaken by events out of his control for the Succession court nullified the grant that had led to him having title.
11. For the above reasons I do not see any merit in this application and it is dismissed.
12. Each party will bear his/her own costs of this suits Kisii ELC No. 352 of 2013 and Kisii ELC No. 459 of 2013.
13. The two files may be closed.
14. Orders accordingly.

**DATED AND DELIVERED THIS 12 DAY OF MARCH 2024**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of:

Mr. Mulisa for the plaintiff/respondent

Mr. Okemwa for the 1<sup>st</sup> defendant/applicant

Mr. Soire for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in the suit Kisii ELC No. 459 of 2013

Court Assistant – David Ochieng'

