



**Mudembei & another v Malembi & another (Environment & Land
Case 3 of 2020) [2024] KEELC 1239 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1239 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 3 OF 2020
EO OBAGA, J
MARCH 7, 2024**

BETWEEN

TRUFOSA CHEREDI MUDEMBEI 1ST PLAINTIFF

NEVIN EGESA JEDEVERA 2ND PLAINTIFF

AND

JOHN K MALEMBI 1ST DEFENDANT

SETTLEMENT FUND TRUSTEE 2ND DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 29.11.2023 in which the Applicants are seeking the following orders: -
 - i. Spent
 - ii. The Applicants be and are hereby made interested parties to this suit.
 - iii. Pending inter parties hearing and further orders there be a temporary injunction against the plaintiffs stopping them from executing the orders issued in the judgement of the court delivered on 13.10.2023.
 - iv. There be a review of the judgment of this court delivered on 13.10.2023 and the same be set aside and the suit be heard de novo.
 - v. spent
 - vi. The costs of this application be provided for.



2. The Applicant's contend that they were not aware of the proceedings in this matter and that they have titles to their respective portions which they purchased from the 1st Defendant/judgement Debtor. If they were to be evicted from the suit property, their interests will be affected.
3. The Applicants pray that they be admitted to this case as interested parties and that the judgment which was delivered on 13.10.2023 be set aside.
4. The Applicants application is opposed by the Plaintiffs/Decree Holders Respondents based on grounds of opposition dated 11.12.2023 and filed in court on 13.12.2023. The Respondents contend that the Applicants' application is devoid of merit and does not disclose any reasonable cause of action.
5. The Respondents state that the Applicants cannot seek to join a join a suit which has been concluded and that if they have any cause of action against them, they should file their own cases.
6. The Respondents argue that the 1st judgment Debtor is in contempt of court by transferring portions of the suit property to the Applicants. They further argue that the Applicants have not met the threshold for grant of a review under order 45 Rule 1 of the *Civil Procedure Rules*.
7. The Respondents content that the litigation herein commenced on 23.10.2000 and was concluded after 23 years. The case has been to the Court of Appeal and back to Environment and Land court where it was finally concluded on 13.10.2023.
8. The Respondent further argue that there are no sale agreements exhibited or transfer forms to confirm whether the titles which the Applicants have were genuinely obtained. They contend that the Applicants are guilty of laches and are only out to delay them from enjoying the fruits of their judgment.
9. The parties agreed to dispose of the application by way of written submissions. The Applicants filed their submissions on 21.12.2023. The Respondent filed their submissions on 26.1.2024. I have gone through the Applicants' application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties.
10. The issues which emerge for determination are firstly, whether the Applicants should be joined in this case. Secondly, whether the judgment herein should be set aside. Thirdly, whether an injunction should issue in this matter.
11. On the first issue, it is important to note that this case was filed on 23.10.2000 before the High Court at Eldoret. The case was fully heard and a judgment was delivered on 17.5.2015. The 1st Judgement Debtor appealed to the Court of Appeal. The Court of Appeal delivered its judgment on 28.11.2019 whereby it was held that the High Court had no jurisdiction to entertain the case when there was the Environment and Land Court which had the jurisdiction to adjudicate over it.
12. The case was remitted to the Environment and Land Court where it was heard afresh and judgment delivered on 13.10.2023. when the Respondents commenced the execution process, the present application was filed. The Applicants are seeking to be joined in this case post judgement.
13. The jurisdiction to join a party to a case post judgment is exercised only in exceptional and justifiable circumstances. One such exception is where a case has been determined and adverse orders have been issued against a party who was neither given notice of the case nor heard on the issue in dispute.



14. In *Mary Beach Limited –v Attorney General and 18 others* (2018) eKLR the Court of Appeal outlined the relevant principle as follows: -

“ However there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been passed. One such exception is where a matter has been determined and adverse orders have been issued against a party who was neither given notice of the suit nor heard on the issue in dispute. Enjoining such a party a court would also have to set aside the judgement entered to give him/her an opportunity to be heard.”

15. The Applicants did not attach copies of sale agreements to their application for joinder as interested parties. I am therefore not in a position to tell when they purchased their respective portions. However, a look at the copies of titles annexed, it is clear that the 1st, 2nd, 3rd, 4th and 6th Applicants obtained their titles on 1.11.2018. The 5th Applicant obtained his title on 19.10.2023.

16. The 1st Defendant/judgment Debtor had been permanently enjoined from interfering with the suit property vide judgement of 17.11.2015. There were however stay orders which were given which stay orders lapsed on 28.7.2016. This therefore meant that the 1st Defendant/Judgement Debtor and his servants were restrained from dealing in any manner with the suit property.

17. There was no stay granted by the Court of Appeal. As the 1st, 2nd, 3rd, 4th and 6th Applicants purchased their properties in 2018 after the judgment of 17.5.2015 which was valid and had not been set aside, there is no way High Court would have made any adverse orders against them as they were not entitled to be notified. Despite the injunctive orders being in force and the proceedings being active the 1st Defendant/judgment Debtor proceed to sell portions of the suit property to the Applicants.

18. The 1st Defendant/Judgment Debtor was aware that the title held by him had been declared to be null and void. He was aware that there were active proceedings going on in court. Even the Court of Appeal held in their judgment that the title held by the 1st Defendant/Judgment Debtor was a nullity. They only remitted back the case for fresh hearing as the High Court had no jurisdiction to hear the case.

19. This being the case, the 1st Defendant/Judgment debtor had no good title to pass on to the Applicants. The second judgment in this matter was delivered on 13.10.2023. The 5th Applicant obtained his title on 19.10.2023. This was after the judgement. He cannot therefore be joined in these proceedings.

20. The circumstances of this case do not call for joinder of the Applicants in this case. The case has taken 23 years to conclude. Joining the Applicants as interested parties will inevitably mean that the judgment has to be set aside. If this were to happen, it will be tantamount to rewarding the 1st Defendant/Judgment Debtor who has gone ahead to sell the suit property well aware that he had no good title. The Applicants should pursue the 1st Defendant/Judgement Debtor for any damages which they will incur. I therefore find that joinder of the Applicants is not tenable.

21. On the 2nd issue, I find that there are no grounds for setting aside the judgment upon review. There is no error apparent on the face of the record or discovery of new evidence. There are also no sufficient reason to have the judgment set aside. This is particularly given the circumstances of this case and the fact that the application for joinder has been declined.

22. On the 3rd issue, I find that no injunction can be given in view of my finding on issue number one and two. The upshot of this is that I find that the Applicants’ application lacks merit. The same is dismissed with costs to the Respondents.

It is so ordered.



DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 7TH DAY OF MARCH, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Omukunda for Applicants.

M/s Nyabuto for Respondent.

Court Assistant –Akidor

E. O. OBAGA

JUDGE

