



**Mairani & 2 others v Director of Land, Adjudication & Settlement & 3 others
(Civil Application E003 of 2022) [2022] KECA 632 (KLR) (8 July 2022) (Ruling)**

Neutral citation: [2022] KECA 632 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E003 OF 2022
DK MUSINGA, K M'INOTI & J MOHAMMED, JJA
JULY 8, 2022**

BETWEEN

**NJERU MAIRANI 1ST APPLICANT
JOEL NGATIARI 2ND APPLICANT
DANIEL NYAGA 3RD APPLICANT**

AND

**DIRECTOR OF LAND, ADJUDICATION & SETTLEMENT . 1ST RESPONDENT
LAND ADJUDICATION OFFICER, MERU SOUTH ADJUDICATION
AREA 2ND RESPONDENT
CABINET SECRETARY, LANDS & PHYSICAL PLANNING 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT**

(Being an application for an injunction pending the filing and determination of the intended appeal against the Judgment and Decree of the Environment and Land Court at Chuka)

RULING

1. The applicants' Notice of Motion dated 18th January 2022 seeks an interim order of injunction pending hearing and determination of this appeal to restrain the respondents from further implementing the process of ascertaining and registering interests in the parcels of land within an area known as Kamaindi/Kamwimbi "B" Adjudication Sections (the suit lands), and/or enforcing any legal notices thereof.
2. In the affidavit sworn by the first applicant in support of the application, he states, inter alia, that in its judgment dated 14th December 2021, the trial court (Yano, J.) struck out their application seeking an order of mandamus to compel the second respondent (the Land Adjudication Officer - Meru South



Sub - County) to compel their claims of interest within the suit land and a further order of mandamus to compel the said officer to issue a legally valid and effective notice under section 5(2) (c) of the Land Adjudication Act, and other related judicial review orders. However, the trial court held that the suit was *res judicata* in view of a determination made in ELC Case No. 16 of 2018 at Chuka.

3. In the aforesaid case, the applicants had complained of having been illegally excluded from the Land Adjudication Committees and had prayed for an order or prohibition to prohibit the 2nd, 3rd, 4th and 5th respondents from effecting declaration reference No. ADM/LA/4/118 of 4th October 2012 by the 5th respondent, which order was granted.
4. The applicants therefore argued that the suit that was struck out related to entirely different issues and sought different reliefs, and to that extent the learned judge erred in striking it out, even when the respondents had not controverted the applicants' averments that they had been unlawfully barred from presenting their claims of interest in the suit land.
5. The applicants therefore contend that their intended appeal is arguable, and that unless the orders sought are granted the intended appeal, if successful, shall be rendered nugatory as they will have been completely denied an opportunity to have their land interests ascertained.
6. The respondents though served with the application and the hearing notice, did not file any replying affidavit or submissions in opposition to the application.
7. We have perused the written submissions by the applicants' learned counsel. We are satisfied that the applicants have satisfied the twin principles for grant of the orders sought under rule 5(2) (b) of this Court's Rules as stated in a plethora of our decisions, including Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR.
8. The intended appeal is arguable. The applicants' position is that the learned judge erred in striking out their suit on the ground that it was *res judicata*. This is certainly an arguable ground. This Court has severally held that an arguable appeal is not one that must succeed, but one which ought to be argued fully; and that even a single bona fide arguable ground is sufficient.
9. Secondly, we are equally satisfied that unless the orders sought are granted, the intended appeal, if successful, shall be rendered nugatory because the applicants will have permanently lost the opportunity to present their claims and interests over the suit land under the land adjudication process.
10. Consequently, we hereby grant the interim orders of injunction as sought by the applicants in their application dated 18th January 2022. We make no orders as to costs.
11. Granted that this is a matter which affects a substantial population in the adjudication section and therefore deserves to be determined without undue delay, the applicants shall file and service the record of appeal within forty-five (45) days from the date of this ruling, failing which the order of injunction shall stand vacated.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JULY, 2022.

D. K. MUSINGA, (P)

..... **JUDGE OF APPEAL**

K. M'INOTI

..... **JUDGE OF APPEAL**

J. MOHAMMED



..... **JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

