



**Mokoh v Oginga (Environment & Land Case 192 of 2017)
[2025] KEELC 927 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 927 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT & LAND CASE 192 OF 2017
FO NYAGAKA, J
FEBRUARY 26, 2025**

BETWEEN

TITUS KAHUNYORO MOKOH PLAINTIFF

AND

RISPER AKEYO OGINGA DEFENDANT

RULING

1. The Defendant/Applicant filed the instant application dated 24th October 2024, seeking the following orders:
 1. Spent
 2. That the honorable court be pleased to interpret the two judgments and the two decrees from the two different courts (sic).
 3. That the honorable court be pleased to halt the present proceedings in this pending the hearing of the interpretation of the decree from different courts at Rongo and Migori environment and land court.
 4. That the present case is a res-judicata case as the previous case was determined at Rongo (sic).
 5. That this suit entirely be dismissed for lack of locus standi.
2. The Application was based on grounds set out and supported by the Affidavit of Risper Akeyo Oginga the Defendant/Applicant herein sworn on 24th October, 2024.
3. She deposed that her deceased husband purchased Kamagambo/kabuoro/1251 having paid Kshs. 70,000 and the balance of Kshs. 65,000 was to be paid at a later date when the title was issued. That her husband died before he obtained the title and that there was a pending case at the tribunal. She stated that she had been ready and willing to pay the balance of Kshs. 65,000 but that the Respondent



was not willing to receive the same. She added that the Respondent filed a case in the Environment and Land Court (this Court) and judgment was delivered contrary to the earlier decree issued in the subordinate court in Rongo. The Applicant stated that there were two judgment and decrees that were contrary and he sought for interpretation of the same.

4. She added that there was a pending application before the court of appeal. The Applicant sought for stay of proceedings before this court until the court called for the Rongo Court file no. Misc. Application 28 of 2006. She stated that she has since done substantive development on the land and that it would be better for the Respondent to collect his Kshs. 65,000/=.

Response

5. The Plaintiff/Respondent filed his replying affidavit dated 22nd January 2005 where he averred that 19th April 2016 he filed the present suit seeking eviction against the Defendant/Applicant over L.R Kamagambo/kabuoro/1251 the suit property herein. He further averred that the matter was heard and judgment delivered in his favour on 12th April, 2018. He averred that the Applicant being aggrieved with the judgment preferred an appeal at the Kisumu Court of Appeal Civil Appeal No.33 of 2019 where it was dismissed for non-attendance on the part of the Defendant. He further averred that the Applicant filed the application that sought for restoration of the appeal which ruling was set for 24th November, 2023. The Respondent averred that the court having pronounced itself over the subject dispute by the judgment delivered on 12th April, 2018 which judgment has not been set aside or reviewed, the orders sought are legally untenable.
6. He averred that this honourable court was being asked to sit on its own appeal having already issued orders of eviction. He further averred that there are currently no orders for stay of execution in force. He added that the Defendant/Applicant having chosen to appeal, she cannot come back and seek for an order of interpretation of its decree. He averred that the court was functus officio having pronounced itself in the instant matter and issued orders of eviction which was the subject of the pending appeal. He averred that the Defendant/Applicant has not approached this court with clean hands and is therefore undeserving of the orders sought. He added that the eviction now being sought to be reviewed were part of the judgment which was appealed against. Further, the instant application was an appeal in disguise hence an abuse of the court process. In conclusion, he urged the court to dismiss the application with costs and the contempt it deserves.

Submissions

7. Counsel for the Defendant/Applicant filed his submissions dated 30th January, 2025 where he gave a summary of the case and submits that there were two cases touching on the suit property, the present case and Rongo Msc. Application No. 28 of 2006. He submitted that the subordinate court in Rongo vide its decree dated 18th January, 2018 had directed the Applicant pay the Respondent the balance of Kshs. 65,000/= or surrender the land to the Respondent.
8. This court on the other hand in its judgment delivered on 12th April, 2018 found in favour of the Plaintiff/Respondent herein and a refund of the Kshs. 70,000/= to the Defendant/Applicant. He further submits that the Applicant filed an appeal against the ELC matter which is still pending determination and an application for stay of execution was also granted in the appeal. He urges the court to interpret the two judgments and decree from the two courts in Rongo and Migori in relation to the sale agreement.



Analysis and Determination

9. This court has considered the application which is for interpretation of the two judgments in Rongo Msc. Application 28 of 2006 delivered on 18th January, 2011 and Migori ELC 192 of 2017 delivered on 12th April, 2018.
10. It was the Applicant's claim that the reliefs granted in ELC 192 of 2017 differed from that of the decree in Rongo Msc. Application 28 of 2006.
11. I have keenly perused the record and it is not in dispute that the decree in Rongo Msc. application 28 of 2006, the court adopted the award by the elders filed on 21st June, 2006. It is noteworthy that the parties in the said matter were the Plaintiff/Respondent herein and Oyugi Oremo. On the other hand, the Defendant in the present matter is not the same one in Rongo Msc. Application 28 of 2006. It is therefore not in dispute that the parties in the two matters are different. This court heard and determined the matter and it arrived its determination based on the evidence and testimony of the parties present in the case.
12. It is my humble opinion that the Applicant's argument that the reliefs granted in this matter differed with those of the decree in Rongo Msc. Application 28 of 2006 is rather misplaced. The Appellant's counsel confirmed orally in court that the trial judge considered the said decree but failed to refer or consider it in the formal decree/reliefs issued. This Court has confirmed from the content of the judgment herein when compared with the decision in the matter decided by the Rongo Court that indeed the Court, in the instant matter, was alive to the existence and content of the latter matter and took it into account when arriving at the decision impugned.
13. It is therefore this court's view that the judgment and decree in this matter is clear and distinct, directed at resolving all issues in controversy between the parties, and effectually does so, and the later judgment and decree cannot be affected or hampered by the earlier one in a different matter.
14. The upshot of the foregoing is that the present application is without merit and therefore dismissed with costs.
15. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 26TH DAY OF FEBRUARY 2025.

HON. DR. *IUR* NYAGAKA

JUDGE

