



**Kirochi (Suing as Legal Representative of Kemunto Kirochi - Deceased) v Nyachani & 2 others  
(Environment & Land Case 438 of 2014) [2024] KEELC 3374 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3374 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 438 OF 2014**

**M SILA, J**

**APRIL 23, 2024**

**BETWEEN**

**JOHN ONKUNDU KIROCHI (SUING AS LEGAL REPRESENTATIVE OF  
KEMUNTO KIROCHI - DECEASED) ..... PLAINTIFF**

**AND**

**JOHN NYACHANI ..... 1<sup>ST</sup> DEFENDANT**

**ONDIEKI NYACHANI ..... 2<sup>ND</sup> DEFENDANT**

**RICHARD OMWANDO NYACHANI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application before me is that dated 19 June 2023 but filed on 20 September 2023. It seeks the following orders :-
  - a. Certification of Urgency.
  - b. That this Honourable Court be pleased to make an order that the Executive Officer of this Honourable Court be allowed to sign necessary documents of mutation form on behalf of the proprietors to effect the process continue (sic).
  - c. That costs of this application be in the cause.
2. The application is opposed by a replying affidavit sworn by the 1<sup>st</sup> respondent who has averred that he has the authority of the other respondents to oppose the motion.
3. I have gone through the record. I observe that the suit herein was commenced by way of a plaint which was filed on 12 November 2014. The suit was filed by the applicant on behalf of the estate of his deceased mother, Kemunto Kirochi. It was the averment of the applicant that the deceased was the owner of the land parcel Majoge/Bosoti/1665 (the suit land) which he stated measured 5 acres.



He accused the respondents of trespassing into the land. He also contended that the defendants had annexed part of the land of the deceased and annexed it to the parcel Majoge/Bosoti/17. He inter alia sought orders for re-survey of the suit land together with the land parcel Majoge/Bosoti/17, a permanent injunction to restrain the respondents from the suit land, general damages for trespass and costs of the suit. The defendants filed defence and refuted the claims of the applicant. They did not deny that the deceased was the registered owner of the land parcel No. 1665 but contended that it measured 3 acres and not 5 acres as claimed by the applicant. They asserted title to the land parcel No. 17, which shared a boundary with the parcel No. 1665, and were of the view that what was presented was a boundary dispute.

4. The court directed the County Land Registrar and the County Land Surveyor, Kisii, to visit the land parcels Majoge/Bosoti/17 (parcel No.17) and Majoge/Bosoti/1665 (parcel No.1665) and mark their boundaries. The officers were also directed to file a report. This exercise was done and a report dated 28 March 2019 was filed. The report stated that the plaintiff was not occupying or interested in the parcel No. 1665 and that there were other persons living in the land who were not parties to the suit. It also stated that the defendants were living within their parcels of land which resulted from subdivision of the land parcel No. 17. These parcels were identified as Majoge/Bosoti//3099, 3100, 3101, 3102, 3103, 3104, and 3105. The applicant was dissatisfied with these findings and the court directed the matter to proceed for hearing.
5. Subsequently on 1 December 2020, the matter was referred for mediation. The parties came up with a mediation agreement dated 12 February 2021 which was adopted by court (Onyango J) on 17 May 2021. It was drawn as follows :

Mediation settlement agreement

We the undersigned parties to this action have agreed to settle our dispute/difference as follows ;

Partial agreement

- That the plaintiff Kemunto Kirochi who is represented by John Kirochi (son) bought land from Samwel Nyachani the father of the respondents in 1966 after paying twelve cows she was settled on the lower side of the road down to the river.
- That the plot number Majoge/Bosoti/1665 belongs to Kemunto Kirochi plot.

Signed

John Onkundi ..... Plaintiff

Christopher Ondieki ..... Defendant

Richard Omwando ..... Defendant

John Nyachani ..... Defendant

Patrick Otiso Machuka ..... Mediator.

6. What followed was an application dated 3 March 2022 filed on 13 May 2022 by the plaintiff seeking the following orders :
  - a. Certification of urgency.
  - b. That the honourable court be pleased to direct the County Surveyor to visit land parcel Majoge/Bosoti/1665, mark and fix the boundaries as per the decree of this court, that is in the lower side of the road down the river.



- c. That the land surveyor upon marking the ground on the lower side of the road down to the river be pleased to amend the R.I.M as required.
7. That application was fixed for hearing inter partes on 6 June 2022, before Onyango J, when Mr. Sagwe appeared for the applicant and Mr. Nyatundo appeared for the respondents. The remarks on record are that ‘by consent the application dated 3.3.2022 is granted in terms of prayer (b) of the Notice of Motion. The matter is hereby marked as settled.’”
8. Nothing happened until the current application was filed and I have already set out the prayers sought. The supporting affidavit is sworn by John Onkundi Kirochi. He has averred that the Land Registrar and County Surveyor were directed to implement the order of court issued on 26 September 2022 (which is the same order made on 6 June 2022); that the defendants have refused to cooperate and sign the mutation forms to enable the surveyor complete his work and the only recourse is to have the Executive Officer of the court sign it.
9. In his replying affidavit, the 1<sup>st</sup> respondent has referred to the mediation agreement and the order (b) in the application dated 3 March 2022 which was allowed. He has deposed that neither the decree nor the order of 6 June 2022 direct a resurvey or redrawing of mutations and amendment of the R.I.M. He believes that the applicant is attempting to award himself more land than already mapped for the land parcel Majoge/Bosoti/1665. He believes that the applicant has misapprehended and misinterpreted the decree to mean that he was awarded the entire lower side of both parcels, that is parcel No. 1665 and No.17 and there is a design to redraw the mediation agreement to give more acreage to the parcel No. 1665.
10. I directed counsel to file submissions towards the application and I have seen the submissions of Mr. Sagwe, learned counsel for the applicant and Mr. Nyatundo, learned counsel for the respondents. I have taken these into consideration before arriving at my decision.
11. The application herein seeks an order to have the Executive Officer sign mutation forms on the allegation that the respondents have refused to do so. I am afraid that the application cannot be allowed.
12. First, it is not even indicated what parcel of land is supposed to be subdivided. It certainly cannot be the land parcel Majoge/Bosoti/17 because this land is already subdivided into various parcels of land as indicated in the report of the Land Registrar. Secondly, there is no order or decree made in this suit that any particular land be subdivided and be given to the plaintiff. All that was agreed before the mediator was that the deceased bought some land from the father of the respondents and was settled on the lower side of the river, and further, that the deceased owned the land parcel Majoge/Bosoti/1665. There was never any agreement for subdivision of any land or any agreement that the applicant be given any land. I wonder where the applicant has got the idea that there is a decree for him to be given any land. There is none. The order of 6 June 2022 which directed the County Surveyor to visit the land parcel Majoge/Bosoti/1665 and fix the boundary, which is on the lower side of the road down the river (wherever that may be), and also ‘amend the Registry Index Map as required’ in my view does not help the applicant. There is lack of clarity on what this ‘lower side’ constitutes and in which parcel number it falls, but most importantly, it is not part of what the parties agreed. I agree with Mr. Nyatundo, learned counsel for the respondents, that all that the decree stated was that the deceased owned the parcel Majoge/Bosoti/1665 (the obvious). There is no decree giving the applicant any land.
13. It doesn’t matter whichever angle one looks at the application. It certainly is not one that can be allowed. It is hereby dismissed with costs to the respondents.
14. Orders accordingly.



DATED AND DELIVERED THIS 23 DAY OF APRIL 2024

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**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

AT KISII

