Njagi v Mugambi (Environment & Land Case 9 of 2018)
[2025] KEELC 947 (KLR) (25 February 2025) (Ruling)

Neutral citation: [2025] KEELC 947 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ENVIRONMENT & LAND CASE 9 OF 2018

BM EBOSO, J

FEBRUARY 25, 2025

BETWEEN

LOICE MUTHONI NJAGI ..... PLAINTIFF

AND

MARGARET CIAMBAKA MUGAMBI ..... DEFENDANT

RULING

1. This suit was initiated on 19/9/2018 through an originating summons dated 18/9/2018. Through the originating summons, the plaintiff invited the Court to determine various issues revolving around the broad question as to whether she was entitled to be registered as proprietor of 4.75 acres out of land parcel number Magumoni/Thuita/1318 [hereinafter referred to as "the suit land"]. She contended in her supporting affidavit that the suit land measured approximately 5 acres and that the defendant had her homestead on only 0.25 acres.

2. Upon concluding trial, this Court [P M Njoroge, J] found in favour of the plaintiff and issued the following three verbatim orders:

    a. As the plaintiff's case for adverse possession has succeeded, I declare that she is entitled to be registered owner of 4.75 acres out of Land Parcel No. Magumoni/Thuita/1318.

    b. The defendant is ordered to effect the transfer of 4.75 acres out of Land Parcel No. Magumoni/Thuita/1318 to the plaintiff and in default the Deputy Registrar of this Court is authorized to execute all documents necessary to effectuate the implementing of this order.

    c. As the parties are spouses of one deceased husband, this Court issues no order as to costs and parties will bear their own costs.

3. Subsequent to that, the defendant brought an application dated 9/6/2023 seeking a review of the Judgment in terms of the following verbatim orders:

a. This application be certified urgent and be heard ex-parte in the first instance.

b. The firm of M/s Kiautha Arithi & Co. Advocates be granted leave to come on record in place of the firm of Joe Kathungu & Co. Advocates.

c. This Honourable Court be pleased to review its Judgment/decree dated 22nd May 2019 in the following terms:

   i. The area physically occupied by the respondent and her family over LR. Magumoni/Thuita/1318 is 3.50 acres and not 4.75 acres.

   ii. The area physically occupied by the applicant and her family over LR. Magumoni/Thuita/1318 is one point zero seven (1.07) acres and not 0.25 acre.

d. The Applicant and the respondent be respectively registered as proprietors in common over LR. Magumoni/Thuita/1318 in portions of one point zero seven (1.07) acres and 3.50 acres respectively.

e. The respondent be ordered to surrender the original title deed to the Land Registrar, Meru South (Chuka) for appropriate insertions/changes and in default this Honourable Court do direct the Land Registrar to dispense with its production.

f. The respondent be ordered to execute the requisite instruments to effect Nos 3 & 4 above and in default this Honourable Court do empower its Deputy Registrar to execute the same.

g. Proceedings in Embu CMCC Succ No. 184 of 2011 (In the Matter of the Estate of Njagi Njuki (Deceased) be stayed pending the hearing and determination of this application.

h. This Honourable Court do issue such further or better orders as will meet the ends of justice.

4. The review application was heard and disposed by Yano J through a ruling dated 29/2/2024 in terms of the following verbatim orders:

   a. The Land Registrar and the District Surveyor, Meru South (Chuka) are directed to visit the suit parcel of land LR. No. Magumoni/Thuia/1318 within 90 days in the presence of the parties or their authorized representatives to confirm the acreage of the land on the ground, and if the same does not tally with the acreage on the register, to effect the necessary amendment and/or rectification of the register.

   b. Confirm the area physically occupied by the respondent and the area occupied by the applicant and sub-divide the land and issue titles in favour of the respondent and the applicant in terms of the area they each occupy.

   c. The applicant will meet the costs of the exercise to be undertaken in (a) and (b) above.

   d. Each party to bear their own costs of the application.

5. What followed was an application dated 6/11/2024 by the defendant seeking the following verbatim orders:

   a. The District Surveyor and Land Registrar Meru South report dated 26th June 2024 be adopted as part of this Honourable Court's record.

   b. This Honourable Court do order the Officer Commanding Police Station (O.C.S) Chuka Police Station to provide the District Surveyor and Land Registrar Meru South with security to implement the said report.

c. Costs of this application and those of security provision be borne by the respondent.

6. The application dated 6/11/2024 is the subject of this ruling. It was premised on the grounds outlined in the motion and in the defendant's affidavit dated 6/11/2024. It was canvassed through written submissions dated 20/12/2024 and 24/1/2025, filed by M/s Kiautha Arithi & Co. Advocates.

7. The case of the applicant is that, on 17/4/2024, the District Surveyor and the Land Registrar, Meru South, in the company of the parties and their advocates, visited the suit land as ordered by the Court and were shown the manner of occupation as per the Court order. The applicant contends that subdivision of the land on the ground was not possible because one Elizaphan Muriithi Njagi, a son to the plaintiff, threatened them with violence. She adds that because of the threat of violence, the Surveyor and the Land Registrar called off the exercise and indicated that they would make their report and deliver it to Court.

8. The applicant adds that the orders on fixing the parties' boundaries on the ground and on issuance of title deeds to the parties was not implemented due to the threat of violence by the respondent's son. She urges the Court to order the implementation of the said report and provision of security by the Officer Commanding Chuka Police Station. Lastly, she urges the Court to order that costs of the exercise be borne by the respondent.

9. The respondent opposed the application through an affidavit dated 24/10/2024, sworn by Kinya L. Kaimenyi Advocate and through written submissions dated 21/1/2025, filed by M/s Thuranira Atheru & Company Advocates. The respondent's case is that on 3/4/2024, the Land Registrar served her with a notice of intention to ascertain and fix the boundaries on 17/4/2024. The respondent's counsel further avers that on the material day, she objected to the participation of M/s Geoland Surveys in the exercise because they had made proposals on subdivision of the suit land, which proposals were rejected by the Court. The respondent contends that after the exercise was completed, the Surveyor prepared a report which was objected to by the respondent as it was against the Court orders and was identical to the proposal by M/s Geoland Surveys.

10. The respondent further contends that the allegation by the Surveyor that she cannot establish the boundaries as per the parties' physical occupation is false, baseless and unfounded. The respondent argues that the Surveyor came to the survey exercise with a preconceived mind not to comply with the Court orders. The respondent adds that the Land Registrar has not offered any explanation why she has not amended the register to reflect the correct acreage of the suit land.

11. The respondent urges that the Court should direct the County Surveyor and the Land Registrar to go back to the suit land at their cost and subdivide the suit land as per the existing occupation which is not disputed and issue the respective title deeds in compliance with the Court orders.

12. The Court has considered the application; the response to the application; and the parties' respective submissions. Judgment having been rendered in this cause way back in May 2019, this matter should not be occupying the time of the Court. Secondly, the post-judgment jurisdiction of this Court in this matter is restricted to specific post-judgment applications. The Court must remain alive to this fact and to the fact that it has no jurisdiction to entertain new trial issues.

13. It is also important to observe that neither party to this suit has brought to the attention of the Court evidence of subsistence of any appeal against either the Judgment rendered in this cause by P M Njoroge J or the subsequent Ruling rendered by Yano J on the review application. Put differently, parties elected to live with the decree and the subsequent review orders. Clearly, given the above context, the jurisdiction of this court at this point is restricted to enforcement of the Judgment/Decree as rendered by P M Njoroge J and reviewed by Yano J.

14. Bearing the foregoing in mind, the following are the five questions that fall for determination in this ruling:

    (i) Whether the report of the District Land Surveyor and the Land Registrar, Meru South, dated 26/6/2024, should be adopted as part of the record of the Court at this point;

    (ii) Whether a proper case has been made to warrant a second visit to the suit land by the District Land Surveyor and the Land Registrar to enforce the post-judgement orders of the Court;

    (iii) What order should be made with regard to costs of the second visit;

    (iv) Whether there is need for provision of security by the Police during the proposed second visit; and

    (v) What order should be made with regard to costs of this application.

    I will dispose the above issues sequentially in the above order. I will be brief in my analysis.

15. Should the report of the District Land Surveyor and the Land Registrar be adopted at this point? The order requiring the duo to visit the suit land and confirm the acreage was issued by this Court [Yano J] vide a post-judgment ruling rendered on 29/2/2024. The orders of the Court have been reproduced verbatim in one of the preceding paragraphs. Besides confirming the acreage, the duo were ordered to confirm the area physically occupied by the parties to this suit; effect subdivision on the ground; and process titles in favour of the parties. The Court directed the applicant/defendant to bear costs of the exercise. The orders were not challenged and have not been challenged as by law provided.

16. Secondly, there is common ground that the Land Registrar and the Government Land Surveyor visited the suit land as ordered by the Court. There is also common ground that the exercise which the duo was required to carry out was not completed. Indeed, the report presented by the duo indicates that there was threat to their lives. The report recommends that security be provided. By asking for security, the duo are acknowledging that they have not completed the exercise.

17. In the circumstances, the appropriate approach to this matter is to let the duo implement the unchallenged orders of the Court. If there will be need to adopt any report after implementation of the orders of the Court, parties will be at liberty to bring appropriate post-judgment proceedings. At this point, the plea to adopt the incomplete report is pre-mature. Parties are cautioned against introducing new issues at this post-judgment stage.

18. Has a case been made for a second visit by the duo? My answer to the above question is in the affirmative. The duo dealt with only one aspect of the orders of the court:- ascertainment of the total acreage of the suit land and the acreage occupied by the two parties. They did not implement the aspect of subdivision of the land on the ground. They asked for provision of security. Indeed, both parties agree that there is need for a second visit to implement the orders of the Court. For these reasons, the Court finds that a proper case has been made for a second visit to the suit land by the duo.

19. On provision of security, the two Government Officers indicated in their report that there was threat to their lives. The court has no basis to doubt them. The plea for security will, in the circumstances, be granted.

20. On costs of the second visit and costs for provision of security, the Court notes that the previous order required the defendant to bear the costs of the exercise but did not anticipate a second visit. The second visit has been occasioned by a third party who is not a party to this case. Secondly, the whole exercise became necessary because of the discrepancy that exists between the acreage on papers [land register, title and decree] and the acreage on the ground. Neither of the two parties can be said to be responsible

for the discrepancy. For these reasons, the fair approach to take in this post-judgment application is to order that the two parties to this suit do equally bear costs of the second visit and the cost of provision of security during the second visit. Costs of all other aspects of the exercise will be borne as per the order of Yano J.

21. Lastly, taking into account the circumstances disclosed in the preceding paragraph, there will be no award of costs of the application.

22. In the end, the application dated 6/11/2024 is disposed as follows:

    a. The plea for adoption of the joint report of the Land Surveyor and the Land Registrar dated 26/6/2024 at this point is rejected for being premature.

    b. The Officer Commanding Police Station, Chuka Police Station, is ordered to provide security to the District Surveyor and the Land Registrar, Meru South during their second visit to and subdivision of land parcel number Magumoni/Thuita/1318.

    c. Parties shall equally share costs of the said second visit but all other aspects of costs of the exercise shall be borne by the defendant as ordered by the Court in the ruling of 29/2/2024.

    d. Parties shall bear their respective costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 25TH DAY OF FEBRUARY, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Court Assistant – Mwangi

Plaintiff – Absent

Defendant – Absent