



**Nyangiri v Odeny & another (Environmental and Land Originating  
Summons 14 of 2019) [2024] KEELC 4324 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4324 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 14 OF 2019**

**E ASATI, J**

**MAY 23, 2024**

**IN THE MATTER OF THE REGISTERED LAND ACT CAP 300 (REPEALED)**

**AND**

**IN THE MATTER OF SECTIONS 26 AND 61 OF  
THE LAND REGISTRATION ACT, NO 3 OF 2012**

**AND**

**IN THE MATTER OF THE LAW OF SUCCESSION ACT, CAP 160**

**AND**

**IN THE MATTER OF PARCEL OF LAND NO. KISUMU/KOGONY/1931**

**BETWEEN**

**JOSEPH ONDU NYANGIRI ..... PLAINTIFF**

**AND**

**MONICAH AUMA ODENY ..... 1<sup>ST</sup> DEFENDANT**

**MARK ODORO SEDA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 10<sup>th</sup> November, 2023 expressed to be brought pursuant to the provisions of Section 38(f), 1A, 1B, 3A *Civil Procedure Act*, Cap 21 and Article 159 of the *Constitution of Kenya* 2010. The application seeks for orders that;
  - a. M/S Equity Bank (K) Ltd do appear in this suit to show cause why they should not surrender the title deed for land parcel No. Kisumu/Kogony/1931 to the District Land Registrar, Kisumu for the purpose of cancellation as required in the decree issued herein.



- b. The 1<sup>st</sup> Respondent/Defendant be directed to offer an alternative security by substituting the said land parcel No. Kisumu/Kogony/1931 with a difference security approved by Equity Bank Kenya Ltd within such period as the court may direct for the purpose of ensuring that the amount charged is fully secured.
  - c. Upon compliance with the above, the District Land Registrar be directed to rectify the register for land parcel No. Kisumu/Kogony/1931 by cancelling the registration of 1<sup>st</sup> Respondent/Defendant as proprietor thereof and by reverting the title to the name of Nyangor Ndia (deceased) as ordered in the decree.
  - d. The costs of this application be provided for.
2. The ground upon which the application was brought are that the District Land Registrar has refused to implement the decree issued herein because the suit land parcel No.Kisumu/Kogony/1931 is charged to Equity Bank Kenya Limited and because the court did not issue orders on how to deal with the charge. That the 1<sup>st</sup> Respondent should therefore be directed to offer an alternative security to Equity Bank Kenya Ltd so that the bank can surrender the title deed for land parcel No.Kisumu/Kogony/1931 to the District Land Registrar, Kisumu for the purposes of cancellation as required in the decree issued herein. That it is necessary for the court to give directions as to settlement of the decree with a view to giving effect to the decree and so that the same is not rendered nugatory. That it is just and expedient for the enforcement of and giving effect to the decree issued herein and in the general interest of justice that this application be granted.
  3. The application was supported by the averment in the Supporting Affidavit sworn by the Applicant on 10<sup>th</sup> November, 2023. To the Supporting Affidavit was annexed a copy of the decree which ordered, inter alia, for the register of the suit land parcel No.Kisumu/Kogony/1931 to be rectified by cancelling the registration of the 1<sup>st</sup> Respondent/Defendant as proprietor thereof and by reverting the title to the name of Nyangor Ndia (deceased) pending succession. Also attached to the Supporting Affidavit was certificate of official search in respect of the suit land No.Kisumu/Kogony/1931 dated 29<sup>th</sup> August, 2023. The certificate of official search shows that there exists a charge in favour of Equity Bank Kenya Ltd for Kshs.2,450,000/-. Again, attached to the Supporting Affidavit was a letter dated 18<sup>th</sup> July, 2022 by Moses J.A. Orengo Advocate, addressed to the Land Registrar and the General Manager Equity Bank Ltd asking the Land Registrar to implement the decree. The letter was duly received by the Land Registrar on 27<sup>th</sup> October, 2023 with remarks that  

“ the parcel is charged to Equity Bank. No orders on how to deal with the charge. As such we cannot proceed to implement”.
  4. The application was not opposed. Affidavit of Service filed shows that the application was served upon the Respondent and Equity Bank Kenya Ltd who did not file any response thereto or attend court.
  5. I have considered the application and the oral submissions made by Counsel for the applicant on 29<sup>th</sup> September, 2024. It is clear that the property is charged to the Equity bank Kenya limited whose rights as a chargee are protected by law. It is also clear that the applicant is the decree holder in respect of the suit land and that he is entitled to execution and/or implementation of the decree. These competing interests can only be unlocked and settled by the 1<sup>st</sup> Respondent by him providing alternative acceptable security to Equity Bank Kenya Limited so as to secure the interests of the bank and have the charge on the suit land discharged and the property released so as to enable execution and/or implementation of is the decree. Taking into account the facts of the case, I find that the application has merit and allow it in terms of prayer (b), (c) and (d) thereof as follows:



- i. The 1<sup>st</sup> Respondent/Defendant is hereby directed to offer an alternative acceptable security by substituting the title for land parcel No. Kisumu/Kogony/1931 with a difference security approved by Equity Bank Kenya Ltd within sixty (60) days hereof for the purpose of ensuring that the amount charged is fully secured.
- ii. Upon compliance with the above, the District Land Registrar to rectify the register for land parcel No. Kisumu/Kogony/1931 by cancelling the registration of 1<sup>st</sup> Respondent/Defendant as proprietor thereof and by reverting the title to the name of Nyangor Ndia (deceased) as ordered in the decree.
- iii. The costs of this application are awarded to the applicant.

Orders accordingly.

**RULING DATED AND SIGNED AT KISUMU, DELIVERED VIRTUALLY THIS 23<sup>RD</sup> DAY OF MAY, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

**In the presence of:**

Maureen: Court Assistant.

Orengo for the Plaintiff/Applicant.

No appearance for Defendants/Respondents.

