



Ntoitha v Sub-County Land Adjudication and Settlement Officer, Igembe (North) & 2 others (Environment and Land Constitutional Petition E002 of 2021) [2024] KEELC 4344 (KLR) (22 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4344 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E002 OF 2021

CK NZILI, J

MAY 22, 2024

**IN THE MATTER OF PROTECTION OF THE RIGHTS TO
PROFFER UNDER ARTICLE 40 OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE RIGHT TO FAIR ADMINISTRATIVE
ACTION UNDER ARTICLE 47 OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE AUTHORITY OF COURTS TO UPHOLD AND
ENFORCE THE BILL OF RIGHTS UNDER ARTICLE 23 OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE GRAND LOCATION (DEMARICATION) OF LAND
PARCEL NO. 2168 WITHIN AMWATHI/MUTUATI IIA, ADJUDICATION SECTION**

BETWEEN

SIMON NATAL NTOITHA PETITIONER

AND

**SUB-COUNTY LAND ADJUDICATION AND SETTLEMENT OFFICER,
IGEMBE (NORTH) 1ST RESPONDENT**

**THE DEMARICATION OFFICER, AMWATHI/MUTUATI IIA ADJUDICATION
SECTION 2ND RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT



RULING

1. The court is asked to adopt a consent letter dated 13.12.2023 as an order of the court in order to facilitate the decree of this court. The grounds are set on the face of the application and in an affidavit sworn by Simon Natal Ntoitha on 15.2.2024. Briefly, the deponent states that his petition before the court succeeded, and upon service of the decree to the respondents, a meeting was convened and an agreement reached as per the consent letter dated 13.12.2023 and forwarded to the state counsel Meru by a letter dated 15.12.2023. A copy is annexed as SNN "1". The applicant seeks the adoption of the consent, which he says would be in the interest of justice.
2. What the petitioner had pleaded and prayed for in his petition was a declaration that the actual ground position of his Parcel No. 2168, measuring 2 acres, Amwathi/Mutuati 11A Adjudication Section to remain as occupied by him on the ground opposite his Parcel No. 4246 as per the tracing maps of 1998 and for the adjudication map or the registry index map to be rectified on the ground location of Parcel No. 2168.
3. The 1st – 3rd respondents filed a response through J. Mbai sworn on 22.2.2023 confirming that the records of existing rights for Parcel No. 2168 indicate the petitioner as the owner. The court proceeded to determine the petition based on the pleadings and the evidence disclosed by the parties and proceeded to deliver its judgment on 27.4.2022. The judgment is yet to be appealed against, reviewed, or set aside at the request of any of the parties.
4. A formal consent duly executed by the parties and their legal representatives has not been filed before this court. The contents of the agreement in the letter dated 13.12.2023 are at variance with what was pleaded by the parties. The land Registrar and the Land Surveyor Igembe North were not parties to the Petition.
5. The court is now being asked in the proposed consent to make some orders based on findings that were not pleaded or prosecuted by any of the parties in the petition. None of the parties has applied for the review of the decree or termed it as unimplementable. The effect of the consent order is to replace a lawful decree of this court. If parties choose to mislead or misstate their cases and eventually find the facts as pleaded and facts on the ground at variance at the execution stage, they can only blame themselves and not the court. It is for such reasons that parties have the right to apply for amendments of pleadings at any stage before judgment.
6. The upshot is that I find the application incompetent. It is filed by a law firm improperly on record and lacks merits. It is, therefore, dismissed with costs.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 22ND DAY OF MAY, 2024

HON. C K NZILI

JUDGE

In presence of;

C.A Kananu

Anampiu for Applicant



Miss Mbaikyatta for the Respondents

