



**Kamau & 2 others v Kamau & 6 others (Environment & Land Case
011 of 2022) [2024] KEELC 4554 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4554 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 011 OF 2022**

JM KAMAU, J

MAY 16, 2024

BETWEEN

**PRISCAH NYAKERARIO KAMAU 1ST PLAINTIFF
SIMEON MWANGI KAMAU 2ND PLAINTIFF
FRANCIS MAINA KAMAU 3RD PLAINTIFF**

AND

**MUTHONI KAMAU 1ST DEFENDANT
JOHN MWANGI KAMAU 2ND DEFENDANT
CHARLES OGUTU ONTUNU 3RD DEFENDANT
MONICAH NJERU KAMAU 4TH DEFENDANT
MARY WANJIRU MASANKWA 5TH DEFENDANT
COUNTY LAND REGISTRAR – NYAMIRA 6TH DEFENDANT
COUNTY SURVEYOR – NYAMIRA 7TH DEFENDANT**

RULING

1. Judgment in this case was delivered on 21/12/2023 in the terms that were concretized in a Decree drawn and issued on 23/11/2024:

Claim for:

- a. A Declaration that the registration of the 1st Defendant Muthoni Kamau as the absolute and sole proprietor of parcel LR Gesima Settlement Scheme/224 on 30/10/2008 and subsequent Title Deed issued to her on 30/10/2008 was procured by fraud, unprocedurally, and/or by means of corrupt schemes and therefore fraudulent, illegal, null and void.



- b. A declaration that sub-division of LR Gesima Settlement Scheme/224 into parcels LR Gesima Settlement Scheme/1551, 1552,1553,1554,1555,1556,1557,1558,1559 and 1560 effected by the 6th Defendant on 27/10/2022 and the subsequent registration of the 1st, 2nd, 3rd, 4th and 5th Defendants as the proprietors of the said subdivisions and the Title Deeds issued to the Defendants with respect to the said subdivisions was procured fraudulently, unprocedurally and/or by means of corrupt schemes and therefore fraudulent, illegal and void.
- c. An Order cancelling the Title Deeds issued by the 6th Respondent to the 1st, 2nd, 3rd, 4th and 5th Defendants in respect of Gesima Settlement Scheme/1551, 1552,1553,1554,1555,1556,1557,1558,1559 and 1560.
- d. An Order directing the 6th Defendant to rectify the Register for LR Gesima Settlement Scheme/224 by reinstating the same and cancelling the Register for LR Gesima Settlement Scheme parcels 1551, 1552,1553,1554,1555,1556,1557,1558,1559 and 1560.
- e. An Order directing the 6th Defendant to register 1st Plaintiff and the 1st Defendant as proprietors of LR Gesima Settlement Scheme/224 (as the Personal Representatives of The Estate of Late Naman Kamau Mwangi Alias Kamau Mwangi) in accordance with the Grant of Probate issued in High Court Succ. Cause 409 of 2006 on 14/2/2007.
- f. Costs of this suit.
- g. Any other order the court may deem fit to grant.

Decree

2. This suit coming up for Judgment on 21st day of December, 2023 before HON. Justice Mugo Kamau (judge) in the presence of Mr. Kavita, Advocate of the Plaintiffs and Mr. Nyagarama for the Defendants;
 - a. A Declaration be and is hereby issued that the registration of the 1st Defendant Muthoni Kamau as the absolute and sole proprietor of parcel No. LR Gesima Settlement Scheme/224 on 30/10/2008 and subsequent Title Deed issued to her on 30/10/2008 was procured by fraud, unprocedurally, and/or by means of corrupt schemes and therefore fraudulent, illegal, null and void.
 - b. A Declaration be and is hereby issued that sub-division of LR Gesima Settlement Scheme/224 into parcels LR Gesima Settlement Scheme parcels 1551, 1552,1553,1554,1555,1556,1557,1558,1559 and 1560 effected by the 6th Defendant on 27/10/2022 and the subsequent registration of the 1st, 2nd, 3rd, 4th and 5th Defendants as the respective proprietors of the said sub divisions and the Title Deeds issued to the Defendant with respect to the said sub divisions was procured fraudulently, unprocedurally and/or by means of corrupt schemes and therefore fraudulent, illegal, null and void.
 - c. An Order be and is hereby issued cancelling the Title Deeds issued by the 6th Respondent to the 1st, 2nd, 3rd, 4th and 5th Defendants in respect of Gesima Settlement Scheme 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559 and 1560.
 - d. An order be and is hereby issued directing the 6th Defendant to rectify the Register for LR Gesima Scheme/224 by reinstating the same to the Estate of Naman Kamau Mwangi alias Kamau Mwangi and canceling the registers for LR Gesima Settlement Scheme parcels 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559 and 1560.



- e. The LR Gesima Settlement Scheme shall revert to the name of the 2nd registered proprietor, Naman Kamau Alias Kamau Mwangi and not the 1st Plaintiff and/or 1st Defendant as prayed for in the suit.
 - f. And consequently, the parcel of land known as LR No. Gesima Settlement Scheme/224 shall form part of the Estate of Naman Kamau Mwangi alias Kamau Mwangi to be so included forthwith in Nakuru High Court Succession Cause No. 409 of 2006.
 - g. The Plaintiffs shall also have the costs of this suit against the Defendants.
3. Subsequently, in a letter dated 21/12/2023 and received in court on 9/1/2024 the Judgment Debtor's Advocates applied for a certified copy of the Judgment and Decree. On 23/1/2024 the said Advocates filed a Notice of Appeal pursuant to Rule 75 of the Court of Appeal Rules. The same is dated 7/1/2024. On 25/1/2024 a Notice of Motion was filed seeking an order of stay of execution pending the Hearing and final determination of the intended Appeal. A Memorandum of Appeal dated 8/1/2024 is attached to the said Motion.
 4. There is nothing brought to the attention of this court that the Notice of Motion was ever served upon the Decree but who appeared in Court on 20/2/2024 through their Advocate, Mr. Kavita and said they had not been served with the Application but that they only came to know about it when they came to Court to extract the Decree. On this date, there was no representation for the Judgment Debtor.
 5. Later on, on 8/5/2024 Mr. Kavita told this Court that he was in the Court of Appeal in Kisumu for the Hearing of an Application for stay of execution on the same matter.
 6. Order 42 Rule 6 of the *Civil Procedure Rules* provides for such an Application to be made to the Court that made the Decree and whether granted or rejected, the Court to which the Appeal is preferred shall be at liberty to entertain a similar Application. But not for both Courts to entertain an Application for the same Orders simultaneously. This is to avoid confusion. This Court is not at per with the Court of Appeal. In view of the above, this Application is struck out as an abuse of the process of this Court. Since the Decree Holder did not participate in the Application save the coincidental appearance on 20/2/2024 I will make no Orders as to costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 16TH DAY OF MAY, 2024.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: - Brenda

N/A for the Plaintiff.

Mr. Nyagarama for the Defendant.

