



**Muhindi v Misoi (Environment & Land Case 12 of 2014)
[2024] KEELC 4067 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4067 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 12 OF 2014**

EO OBAGA, J

MAY 9, 2024

BETWEEN

RAPHAEL KAGALI MUHINDI PLAINTIFF

AND

MARY JEROTICH MISOI DEFENDANT

RULING

1. This is a ruling in respect of Notice of motion dated 2/4/2024 in which the Judgment Debtor/ Applicant seeks the following:-
 1. Spent
 2. The honourable court be pleased to grant leave to the firm of M/S N.E Mogusu & Associates to come on record for the defendant for purposes of prosecution of this application and all subsequent court processes on behalf of the defendant.
 3. Spent.
 4. The honourable court be pleased to direct the County Land Surveyor- Nandi County and the County Land Registrar- Nandi County to visit the suit parcel of land registration no. Nandi/ Chebutilet/129 in the presence and direct supervision of the Deputy Registrar of the Land and Environment Court for purposes of picking the actual dimensions, total size/ acreage and the physical location of the piece of land actually being used and occupied by the plaintiff and to file a report in court within 60 days for purposes of the said report giving the honourable court ground information that will enable the honourable court make a determination on the further directions to be issued to guide the mode, manner and process of implementation of the judgement and decree issued by the honourable court herein.



5. That upon compliance with order number 4 above, the honourable court be pleased to issue such further directions and such further orders within its powers as the justice of the case may present for purposes of an effectual and conclusive settlement of this matter in just and transparent manner.
6. The honourable court be pleased to correct the error in its judgment and reflect the correct size/ acreage out of the suit land that is in actual use and occupation by the plaintiff as shall be presented in the ground picking report contemplated in prayer 4 above.
7. Costs of the application be in the cause.

Background;

2. The Decree Holder/Respondent had filed an Originating summons in which he sought orders that he had acquired 0.83 hectares out of LR. No. Nandi/Chebilat/129 measuring 3.8 hectares. The case was fully heard and a judgement was delivered on 24.6.2021 whereby the Respondent was given what he had prayed for.
3. Some interested parties and the Applicant filed notices in the Court of Appeal seeking to enlarge time for filing an appeal against the judgement of the Environment and Land Court. These notices were declared to be incompetent despite the interested parties and the Applicant filing an application seeking to validate the incompetent notices. The Applicant and the Interested parties filed a similar application before the Environment and Land Court. This application was dismissed in a ruling delivered on 26.6.2023.
4. The Respondent filed an application dated 3.2.2023 in which he sought orders that the County Surveyor, Nandi County do implement the judgement by curving out 0.83 hectares out of Nandi/Chebilat/129. This application was allowed on 16.11.2023.
5. As the Respondent embarked on executing the decree of the court, the Applicant filed a notice of motion dated 11.12.2023 in which she sought a review of judgement to read 0.083 acres instead of 0.83 hectares. This application was dismissed on 15.2.2024.

Applicant's contention;

6. The Applicant has now brought the current application in which she contends that this court should supervise the execution of the decree by ordering the Nandi County Surveyor and Land Registrar to go to the ground and take the actual measurements of the land the Respondent occupies so that the decree of the court can be implemented without bringing in other disputes.
7. The Applicant also contends that there is an error in the judgement which needs to be corrected. She states that the judgement should be reviewed to read 0.38 hectares instead of 0.83 hectares.

Analysis and determination

8. The Applicant's application was served upon the Respondents Advocates but there was no replying affidavit filed. This notwithstanding the court must be satisfied that the Applicant deserves the orders which she is seeking. Whereas I do not have any issue granting prayer (2), the issues which emerge for determination are firstly, whether this court should engage the Deputy Registrar of this court to go and supervise the execution of the decree and secondly, whether there are grounds for review of the judgement.



9. On the first issue, this court has already directed the County Surveyor Nandi County to go and excise 0.83 hectares out of LR. No. Nandi/Chebilat/129. This order was given on 16.11.2023. The order was in accordance with the decree of the court. There is therefore no need for the court to direct the Deputy Registrar to go and supervise what the County Surveyor of Nandi County can do without the input of the Deputy Registrar. The court does not require any other measurements other than the acreage which was prayed for by the Respondent and which the court granted him.
10. On the second issue, the court has ruled before that there are no grounds for review of the judgment of 24.6.2021. The Respondent prayed for 0.83 hectares and that is what he was granted in the judgement. This acreage cannot be revised downwards to 0.38 hectares as to do this will amount to going against the judgment of the court.

Disposition;

From the above analysis, I find that the Applicant's application is devoid of merit. It is actually an abuse of the process of the court. Other than prayer (2) which is granted, the other prayers are dismissed with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 9TH DAY OF MAY, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

M/s Oguttu for Mr. Nyamweya for Applicant.

Mr. Mathai for Mr. Kigamwa for Respondent.

Court Assistant –Laban

E. O. OBAGA

JUDGE

9TH MAY, 2024

