



**Makandi (Suing as the Legal Representative of the Estate of Anita Nkaimura M'Mutunga - Deceased) v Attorney General & 4 others; Kamanga (Intended Interested Party) (Environment & Land Case 16 of 2019) [2024] KEELC 5021 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 5021 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 16 OF 2019  
CK NZILI, J  
JUNE 26, 2024**

**BETWEEN**

**FLORENCE MAKANDI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ANITA NKAIMURA M'MUTUNGA - DECEASED) ..... PLAINTIFF**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT SURVEYOR – MERU ..... 2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**COUNTY GOVERNMENT OF MERU ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**JULIUS KIAMBATI ..... INTENDED DEFENDANT**

**AND**

**NELSON NKUNJA KAMANGA ..... INTENDED INTERESTED PARTY**

**RULING**

1. The ruling herein relates to two applications dated 26.3.2024 and 17.4.2024. In the first application, Nelson Nkuunja Kamanga seeks to join the suit as an interested party, stay the decree and orders issued on 16.2.2023 and 7.11.2023, and the setting aside, review or vacation of the orders issued on 16.2.2023, 7.11.2023 and 20.11.2023. The reasons are contained on the face of the application and in his supporting affidavit sworn on 26.3.2023. The applicant averred that he bought part of plot L.R No. Meru Municipality Block II/302 for Kshs.1,450,000 on 16.3.2005 from Marion Muthamia Ikiara as per the annexed sale agreement marked NNK" 1". The said land was subdivided into Meru



- Municipality Block 11/882 and 883 on 17.5.2005 and transferred to his name as per the certificate of lease and search attached as annexure NNK "2" & "3" & "4."
2. The applicant averred that on 2.3.2024, he was surprised to receive the respondent in the company of OCS Meru Police Station accompanied by the District Land Surveyor seeking to implement orders, issued on 7.11.2023 and 20.11.2023 to erect beacons for L.R. No. Ntima/Igoki/820 attached as NNK "5"
  3. The applicant averred that upon perusal of the said order he was surprised to discover that the respondent filed and concluded the matter without involving him despite the fact that she had sought for the cancellation of the title to his plot, without serving him.
  4. The applicant averred that he was not aware of the proceedings and was condemned unheard. Further, he averred that if the orders are executed or enforced, it means his commercial house shall be demolished, yet it has tenants, and his family's constitutional rights to fair hearing treatment, ownership, liberty, and human dignity shall be infringed.
  5. The applicant averred that he stands to suffer damage, harm, and loss; hence, he should be granted the orders sought. He attached the photograph showing the developments marked as annexure NNK "6".
  6. In the second application, Julius Kiambati seeks review of the judgment dated 19.9.2023, orders made on 20.11.2023 and all the subsequent orders thereto, stay of execution of the said orders, joinder to the suit, and leave to defend the suit. The application is supported by grounds on its face and in the supporting affidavit sworn by Julius Kiambati on 17.4.2024.
  7. It is averred that on 4.5.1977, the then Minister for Lands convened a meeting at County Council Chambers on the purchase of developed land in Meru Municipality and informed all land owners that the government was keen on purchasing land for the expansion of the town and gave them caution that they were to adhere to, as per minutes annexed marked JK "3". The 2<sup>nd</sup> applicant averred that under a Gazette Notice No. 1963 of 13.5.1977, all parcels to be compulsorily acquired were published, including the suit land herein. He annexed the same as J.K. "4".
  8. Further, the 2<sup>nd</sup> applicant averred that on 5<sup>th</sup> September 1977, the 1<sup>st</sup> respondent received a cheque of Kshs.41,876/= as compensation, as per a copy attached marked JK'5' and a letter dated 12.2.1982 by the Commissioner of Lands to the town clerk showing the list of acquired plots and the persons compensated. He attached the two as an annexure marked J.K. 6" A" and" B." By a letter dated 18.2.1985, the 2<sup>nd</sup> applicant averred that the Commissioner of Lands wrote to the town clerk confirming that the owners of land could be allocated plots directly by the Meru Plot allocation committee as per a letter attached as JK "7".
  9. Similarly, the 2<sup>nd</sup> applicant averred that on 19.11.1992, the Representative of Gakoromone Former Land Owners met at the District Commissioner's office, and the chairman tabled a list of 78 genuine former land owners, and the 1<sup>st</sup> respondent was number 76 in the list, and was issued with a letter of allotment Ref No.7696/XV/87 dated 5.12.1992 and annexed as JK "8" and 9(a) and (b), respectively.
  10. The 2<sup>nd</sup> applicant averred that upon issuance of the letter of allotment, the 1<sup>st</sup> respondent transferred the plot to Mr. Benson Gichunga Mutea and Vincent Muthaura Mutua vide a transfer dated 1.2.1995 and a Commissioner of Lands letter dated 26.6.1995 marked as JK 10 "A' & "B."
  11. Moreso, he 2<sup>nd</sup> applicant averred that in a surprising turn of events, the 1<sup>st</sup> applicant presented a letter dated 18.1.1990 claiming non-compensation to the 1<sup>st</sup> respondent and by a subsequent letter dated 18.7.2000, he directed the District Land Officer indicating that they were no longer interested in utilizing the land. The 2<sup>nd</sup> applicant averred that the Commissioner of Lands, by a letter dated



- 18.7.2000, wrote to the town clerk, confirming both compulsory acquisition and compensation as per annexure marked J.K. "11" and a forwarding letters to the 1<sup>st</sup> respondent dated 14.5.2008 and 28.11.2008 relying upon the message marked JK "12" and "13" respectively.
12. Similarly, the 2<sup>nd</sup> applicant averred that the 1<sup>st</sup> respondent deliberately withheld vital information from the court, concealed that it knew him as a proprietor of the land, which is extensively developed, and as a result of insincerity, untruthfulness, and malice, obtained an irregular judgment. He annexed a copy of photographs marked J.K. "14". Further, the 2<sup>nd</sup> applicant averred that the 1<sup>st</sup> respondent chose not to sue the National Land Commission (NLC), who took over the mandate of the Commissioner of Lands so as to keep the court in the dark, and that the plan to shut out him from the suit was a well-orchestrated scheme. In addition the 2<sup>nd</sup> applicant avers that as a result of the insincerity of the 1<sup>st</sup> respondent, the court has been led down a dangerous stream of issuing orders that have a likelihood of disturbing, unsettling, or throwing the whole planning of the municipality into disarray as this has the effect of creating a freehold title amongst potentially surveyed and planned town leaseholds. The 2<sup>nd</sup> applicant averred that unless stay orders were granted, his apartment would be demolished and hence would suffer the greatest historical injustice of the century since his land was charged and was servicing a loan of Kshs.56,000,000 obtained from Cooperative Bank.
  13. The two applications are opposed through a replying affidavit sworn by Florence Makandi on 16.5.2024, denying that the judgment obtained was irregular or out of misrepresentation of facts, for it was a legitimate and genuine claim. The 1<sup>st</sup> respondent termed the applicant as strangers to her and that at no time did she know them as in existence or interested in the suit land. The 1<sup>st</sup> respondent averred that she sued the entities in authority who had direct involvement in altering her plot in the map sheet and subsequently dividing it into Meru Municipality Block II/882 and 882.
  14. Consequently, the 1<sup>st</sup> respondent denied that her late mother was ever compensated, given that she was the registered owner of L.R No. Ntima/Igoki.820, yet the compensation went to Stanley Tirima and Wilson Muthaura. The 1<sup>st</sup> respondent also averred that her late mother was illiterate and therefore could not have appended her signature to the purported list of compensated persons, which list she termed as a lie. She also submitted that her late mother had extensively developed her plot, which was demolished by unknown people, whom she now believes must have been the applicant.
  15. The 1<sup>st</sup> respondent averred that in the unlikely event the proposed 5<sup>th</sup> defendant was correct, it would be unbelievable for him to justify how a portion measuring 0.1038 ha fits on a portion measuring 0.12 Ha. She denied that Plot No. 76 had any connection with the suit land herein. Further, the 1<sup>st</sup> respondent termed the two applications as a way of dispossessing her of her land through concocted lies; otherwise, the applicants, if they have developed her plot, should follow up with whoever sold him the land or the relevant authorities to be shown the plot's location.
  16. The two applications are not opposed by the 1<sup>st</sup> – 4<sup>th</sup> respondents, going by the sentiments of Miss Mbakyatta, learned state counsel when the application came for hearing on 20.5.2024.
  17. What the court is asked to do is to join the two applicants to this suit as an interested party and a 5<sup>th</sup> defendant who states that they were and remain bonafide parties whom the plaintiff deliberately chose not to sue and or withheld material information that they were both on the suitland as owners and developers, legally registered as owners of LR No. Meru Municipality Block II/882 and 883.
  18. An interested party has an identifiable stake, legal interest, or duty in the proceedings before the court, in *CCK & another v Royal Media Services Ltd & another* [2014] eKLR, the court said an interested party was a person who has a stake in the proceedings, though she was not a party to the cause ab initio and who is likely to be affected by the decision of the court, either way, it is made. The court cited



- Meme v Republic [2004] 1EA 124, that a party could be joined to a suit if his presence will result in a complete settlement of all the questions involved in the proceedings, it will protect the rights of a party who would otherwise be adversely affected in land and shall avoid proliferated litigation.
19. In these applications, the applicants have provided a history of how they acquired their portions of the land following the compulsory acquisition of the initial freehold parcel of land by the government and the subsequent allocation of leasehold plots by the defunct Municipal Council of Meru. Further, the applicants have demonstrated that their rights to a fair hearing, to ownership of property and occupation have been affected by the judgment, the decree, and subsequent orders to enforce the decree (See Francis Muruatetu & another v Republic & others [2016] eKLR.
  20. Order 1 Rule 10 (2) Civil Procedure Rules provides that a court may join any interested party to a suit. The applicants have suffered prejudice and have demonstrated to the satisfaction of this court a clearly identifiable and proximate stake. They allege legitimate rights and occupation of the suit parcels of land, likely to be affected by the eviction orders.
  21. According to the Blacks Law Dictionary 9<sup>th</sup> Edition, a necessary party is closely connected to a lawsuit and should be included in the case if feasible but whose absence will not require dismissal of proceedings.
  22. In Elton Homes v Davis & others [2019] eKLR, the court allowed the joinder of an interested party after judgment had been entered between the two principals without involving him, yet he was in occupation of the property in which he was being evicted. The court said that the Constitution of Kenya is very clear on the rights to protection of one's property that cannot be arbitrarily taken away from such an owner without being heard and accorded an opportunity to ventilate his case.
  23. In JMK v MWM & another [2015] eKLR, the court had declined to review or set aside a judgment so as to afford the appellant an opportunity to be heard. The court said Order 1 Rule 10(2) Civil Procedure Rules empowers the court at any stage of the proceedings upon application by either party or suo moto to order the name of a person who ought to have been joined or whose presence before the court was necessary to enable the court to effectually and completely adjudicate upon and settle all question involved in the suit, to be added as a party. See Central (K) Ltd v Trust Bank and others CA no. 222 of 1998. The court cited Tang Gas Distributors Ltd v Said and others [2014] EA 448, that a party may even be added after judgment where judgment is yet to be executed.
  24. In this matter, execution of the decree issued by this court is yet to be undertaken. Orders 58 Civil Procedure Rules, as read together with Section 80 of the Civil Procedure Act, allows this court the power to review its orders or decree where there is new and vital evidence, where there is an error apparent on the face of the record, and if there is a sufficient reason. Additionally, the court has the power to set aside its orders, directing that a party to be given an opportunity to be heard. Setting aside orders is aimed at avoiding an injustice, error, or mistake but not to aid those who, through evasion or otherwise, want to derail the cause of justice. See Patel v E.A. (Cargo) Handling Services Ltd [1974] E.A 75 and Mbogo v Shah [1968] E.A 93.
  25. A regular judgment may also be set aside if the applicant has an arguable defense. In Mbaki and others v Macharia & another [2005] 2 EA 206, the court said that the right to be heard is a valued right and that a party affected or prejudiced should be afforded an opportunity to be heard.
  26. In these applications, the applicants have attached copies of ownership documents and evidence of developments on the suit land. The 1<sup>st</sup> respondent has not denied the existence of the ownership documents and developments on the suit parcels of land. It is on the suit parcels of land that the 1<sup>st</sup>



respondent sought enforcement orders to effect the decree of this court. Therefore, it is only fair that the judgment dated 19.4.2023 and all the consequential orders be and are as a result of this set-aside.

27. The applicants are joined to the suit as the interested party and 5<sup>th</sup> defendant, respectively, and shall file any replies to the plaintiff's claim within 30 days from the date hereof. Costs shall be in the cause.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU**

**ON THIS 26<sup>TH</sup> DAY OF JUNE, 2024**

**In presence of**

**C.A Kananu/Mukami**

**Mwirigi Nzomo for the 5<sup>th</sup> interested party**

**Kiogora Mugambi for the 4<sup>th</sup> defendant**

**Florence respondent**

**HON. C K NZILI**

**JUDGE**

