



REPUBLIC OF KENYA



KENYA LAW
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Bitange & another v Tuva & 4 others (Environment and Land Case Civil Suit 475 of 2017) [2024] KEELC 4880 (KLR) (24 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4880 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 475 OF 2017
MN GICHERU, J
JUNE 24, 2024**

BETWEEN

PAMELA MONYANGI BITANGE 1ST PLAINTIFF

DANIEL N. KIMORO 2ND PLAINTIFF

AND

DAVID KASYAKU TUVA 1ST DEFENDANT

MALUNI MUIA 2ND DEFENDANT

MUNINI MATOLO 3RD DEFENDANT

DAMIAN KYENGO MWANGANGI 4TH DEFENDANT

JOSEPH ZETI KATUE 5TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated 21/10/2022. The motion which is brought under Sections 1A, 1B, 3A and 63(e) of the *Civil procedure Act*, Order 51 Rule 1 *Civil Procedure Rules* and all other enabling provisions of the law seeks three orders.
 - i. The court do grant an order directing the District Surveyor Kajiado to visit the suit parcel No. Kajiado/Kaputiei-Central/2305 and subdivide/partition it and do other survey work to give effect to the judgment and decree dated 21/10/2020.
 - ii. The court do grant another order directing the District Surveyor Kajiado to subdivide/partition the suit parcel in the presence or absence of the plaintiffs.
 - iii. That the costs of this application be awarded to the defendants.



2. The motion is supported by an affidavit sworn by the defendants and dated 21/10/2022. It is also based on nine (9) grounds. In brief, the defendants state as follows. Firstly, the court ordered that they be allocated parcels of land measuring 6 acres, 6 acres, 6 acres, 2 acres and 1 acre respectively out of the suit land. Secondly, the plaintiffs have refused to transfer the land as ordered by the court. Thirdly, the plaintiffs have refused to participate in the exercise. Fourthly, the court orders will never be executed if the court does not allow the application. Finally, the surveyor needs a court order to carry out the exercise.

For the above stated reasons, the defendant pray for the orders.

3. The motion is opposed by the respondents and the 1st plaintiff has sworn a replying affidavit dated 31/10/2023 in which she replies as follows. Firstly, the application is untenable and prejudicial to the respondents since they have preferred Appeal No. 500 of 2020. Secondly, the Court of Appeal has already issued directions as to the hearing of the appeal and they have already filed their written submissions. Finally, it is likely that the court of appeal will reverse the judgment and decree herein and it is only fair to wait for the outcome before implementing the decree herein.

4. I have carefully considered the motion in its entirety including the affidavits and the grounds filed by the applicants. I find that the application has merit for the following reasons.

Firstly, the defendants are successful litigants who are entitled to the fruits of their judgment. Secondly, there is no order of stay of execution since the court dismissed the one filed by the plaintiffs on 4/5/2021. Thirdly, the court of appeal has not issued any order of stay. Finally, the plaintiffs have not demonstrated that their appeal has high chances of success.

For the above stated reasons, I find merit in the motion dated 21/10/2022 and I allow it as drawn.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24TH DAY OF JUNE 2024.

M.N. GICHERU

JUDGE

