



Karanja & another v Waweru & 2 others (Miscellaneous Civil Application 36 of 2019) [2024] KEELC 4621 (KLR) (5 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4621 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION 36 OF 2019**

BM EBOSO, J

JUNE 5, 2024

BETWEEN

FRIDAH MUTHONI KARANJA 1ST PLAINTIFF

AYUB KARANJA MWAHUKI 2ND PLAINTIFF

AND

ALICE NJERI WAWERU 1ST DEFENDANT

IBRAHIM MWITHUKIA WAWERU 2ND DEFENDANT

MOSES KAMAU WAWERU 3RD DEFENDANT

RULING

1. Gacheru J rendered a Judgment in this suit on 2/2/2022 and disposed the suit in the following verbatim terms:

“The court finds that the plaintiffs have proved their case against the defendant herein on the required standard of balance of probabilities. Consequently, the court enters judgment for the plaintiff against the defendant jointly and severally in the following terms:

- a. That a vesting order be and is hereby issued that a portion of land measuring approximately 0.5 acres or thereabout to be excised from land title No Muguga /Jet Scheme/587 situate in Kiambu County currently registered in the name of Mohamed Waweru Mwithukia and in possession and actual occupation of the plaintiffs herein.
- b. That an order be and is hereby issued that the plaintiffs herein have acquired prescriptive rights over a portion measuring approximately 0.5 acres or



thereabout in title No Muguga /Jet Scheme/587 under the doctrine of adverse possession.

- c. That an order be and is hereby issued that a portion measuring approximately 0.5 acres be excised from title No Muguga/Jet Scheme/587 and be registered in the names of the plaintiffs herein.
 - d. That each party bear its own costs of the suit.
2. On or about 8/7/2022, the plaintiffs brought a post-judgment application dated 24/6/2022, seeking the following verbatim orders:
1. That all the defendants/respondents herein be compelled to deposit with the Deputy Registrar of the Environment and Land Court of Kenya at Thika the original title in respect to land title No Muguga/Jet Scheme/587, their copies of PIN Certificates, national identity cards and three (3) coloured passport photos (for each person) in execution of this honourable court's decree.
 2. That in the event the defendants/respondents fails to comply with Order 1 above, the Land Registrar, Kiambu be ordered to dispense with production of the original title in respect of land title No Muguga /Jet Scheme/587, their copies of PIN certificate, national identity cards and coloured passport photos of the defendant/ respondents during registration of the transfer.
 3. That all the defendants /respondents herein be compelled to execute the mutation forms, sub division forms and all the requisite transfer forms in respect to land title No Muguga/Jet Scheme/587 in execution of this honourable court's decree.
 4. That in the event that the defendants/ respondents herein refuse to comply with the above order, the Deputy Registrar of the Environment and Land Court of Kenya at Thika does execute the mutation forms, sub division forms and all the requisite transfer forms in respect to land title No Muguga/Jet Scheme /587 in execution of this honourable court's decree.
 5. That the honourable court be pleased to issue an order directing the Officer Commanding (OCS) Kikuyu Police Station to provide security to the Land Surveyor, the Decree Holders/ Applicants, together with their agents and employees during the excising of the portion measuring 0.5 acres in respect to Land title No Muguga/Jet Scheme /587.
 6. That costs be in the cause.
3. The said application is the subject of this ruling. The application was supported with the joint affidavit sworn on 24/6/2022. The application was argued through brief oral submissions tendered in the virtual court on 14/2/2024. The defendants did not file a replying affidavit in response to the application. They elected to only file grounds of opposition dated 27/4/2023.
4. The case of the applicants is that a Judgment and a Decree were issued in this suit in the above terms in April 2022 and a copy of the decree was subsequently served on the respondents. They add that despite them requesting the respondents to avail relevant conveyance documents to facilitate conveyance of the ½ acre that was awarded to them, the respondents have failed to avail the documents. During submissions, counsel for the applicants stated that the respondents' application for an order of stay of



execution was considered by the Court of Appeal and was found unmerited. The applicants urge the court to grant the application as prayed.

5. The respondents oppose the application on the grounds that: (i) the application is incompetent, misconceived and an abuse of the court process; (ii) they have a pending appeal against the judgment that the applicants seek to enforce; (iii) the application is fatally defective in that it is wrongly headed and is brought under wrong provisions of the law; (iv) the orders sought are prejudicial to their pending appeal; (v) the application was brought in bad faith with the sole aim of frustrating their appeal.
6. During the hearing of the application, counsel for the respondents submitted that he would not focus on the technical grounds that the respondents had raised. Counsel faulted the trial court for failing to take judicial notice of the fact that a succession cause had been “filed devolving the suit property to beneficiaries”. Counsel urged the court not to allow enforcement of the judgment.
7. The court has considered the application and the parties’ rival submissions. In their response, the respondents raised grounds of opposition focusing on technicalities. At the hearing of the application, their counsel informed the court that he would not focus on the technicalities. In the above circumstances, the only question to be answered in this ruling is whether the applicants have made out a case for the post-judgment orders that they seek through the application dated 24/6/2022. Put differently, the key question to be answered in this ruling is whether the applicants have made out a case for enforcement of the judgment rendered in this suit.
8. Gacheru J decreed that the plaintiffs were entitled to ½ of an acre out of the suit land. The respondents have conceded that there is no subsisting stay orders issued by the Court of Appeal. Similarly, a perusal of the record of this court does not disclose any subsisting stay order issued by this court. In the circumstances, there is no legitimate ground why the successful parties should be prevented from enforcing the decree of the court.
9. Counsel for the respondents contended that the decree of the court is unenforceable because the succession court has awarded the suit land to beneficiaries. My understanding of the jurisdiction of a succession court in our post-2010 legal system is that, it distributes the net free assets of the deceased. Where there is contestation about title to or ownership of land, the dispute falls within the jurisdiction of the courts that are vested with the mandate to adjudicate land ownership disputes. If indeed the succession court was made to distribute the suit land as part of the net free estate of the deceased, nothing prevents the succession court from reviewing its confirmation/distribution orders to exclude what Gacheru J adjudged not to belong to the estate of the deceased.
10. For the above reasons, the court finds that the applicants have made out a proper case for grant of the post-judgment and enforcement orders in terms of prayers 1, 2, 3, 4 and 5. It is so ordered.
11. The applicants did not pray for costs. No award will be made in terms of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 5TH DAY OF JUNE 2024

B M EBOSO

JUDGE

In the Presence of: -

Mr Kagura for the Plaintiffs

Court Assistant: Hinga

