



Mugwika & 7 others v Ruiiri Farmers Co-operative Society Ltd; County Government of Meru (Objector) (Cause 50 of 2018) [2023] KEELRC 360 (KLR) (15 February 2023) (Ruling)

Neutral citation: [2023] KEELRC 360 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE 50 OF 2018
ON MAKAU, J
FEBRUARY 15, 2023
(FORMERLY NYERI ELRC NO 154 OF 2018)

BETWEEN

ANTHONY MBAABU MUGWIKA & 7 OTHERS CLAIMANT

AND

RUIRI FARMERS CO-OPERATIVE SOCIETY LTD RESPONDENT

AND

COUNTY GOVERNMENT OF MERU OBJECTOR

RULING

1. This ruling relates to a notice of objection dated October 26, 2022 filed under order 22 rule 51 of the [Civil Procedure Rules](#) by the county government of Meru objecting to the attachment and subdivision of land parcel No Kiirua/Ruiiri/5455. The objector contends that the said property is public land that was acquired illegally; that the land is subject to trust and the decree holders have no proprietary interest and/or claim; and that the objector is the rightful proprietor of the said property. In the objector's view the decree holder and the respondent are subverting the [constitution](#).
2. The notice of objection was filed alongside the notice of motion dated even date and supported by affidavit sworn on even date by Mr Muthamia Mbai, an officer in the respondent's department of land, physical planning and urban development. The objector has filed copies of abstract titles to prove that the said land is public land. The motion sought stay pending determination of the motion on the following substantive prayers:-
 - a. That the honourable court be pleased to issue an order of permanent injunction restraining the decree holders either by themselves or through



their agents from proclaiming, attaching and or selling land parcel Kiirua/Ruiri/5455 and its resultant sub-divisions.

- b. That the honourable court be pleased to set aside the orders given on May 5, 2022 and issued on June 13, 2022.
 - c. That a declaration do issue that land parcel Kiirua/Ruiri/5455 and its resultant sub-divisions are hereby released from attachment and any purported sale is hereby set aside.
 - d. The costs of and incidental to this application be borne by the respondent.
3. The application is opposed by both the decree holder and judgment debtor *vide* replying affidavits sworn by the 2nd claimant/decreed holder, and the chairman of the Respondent/judgment debtor. In brief the two parties aver that the attached property is not public land but private land that was lawfully alienated before the 2010 Constitution of Kenya was promulgated. To fortify the said averment, they have filed documents showing the procedure and evolution of the said land from trust land to private land. It is further their case that the attachment and the resultant sub-division of the said land is lawful. Consequently they urge the court to dismiss the objection with costs for being misconceived, ill advised, frivolous and vexatious.
4. By its further affidavit, the objector contends that the sanction granted by its sub-county cooperative officer was invalid for lack of express authority from the CEC member in charge cooperative societies.

Submission

5. The objector reiterated that Kiirua/Ruiri/5455 is a public land that was illegally acquired; that the land is subject to trust; that the objector is the rightful proprietor of the suit parcel; that the decree holders have no proprietary interest or claim against the immovable property of the objector whatsoever; and that the actions of the decree holder and the respondents are flagrant subversion of the constitution.
6. It was submitted that the suit premises was registered in the objector's name from 1965 to 2000 and reserved for factory and not private use. It was therefore contended that the objector has both legal and equitable interests on the land parcel No Kiirua/Ruiri/5455 since it is a public land that was illegally acquired, and cannot be converted to private use in order to settle the decretal sum.
7. It was further submitted that this court has no jurisdiction to adjudicate over land ownership disputes. Further it submitted that the respondent is holding no valid title to the suit premises owing to the illegal acquisition which is the subject of a letter written by the objector to the EACC.
8. Reliance was placed on the case of Alice Chemutai Too v Nickson Kipkurui Korir & 2 others (2015) eKLR, and Mureithi & 2 others (for Mbari ya Murathimi clan) v Attorney General & 5 others (2006) 1 KLR 445 where the court underscored that fraudulent acquisition of land does not give rise to a valid title or convey any legal interest in land.
9. The court was then urged to take judicial notice of the history of grabbing of public land in Kenya and stand to be counted by preventing the illegality being perpetuated through the attachment and alienation of the suit premises by the parties to the suit.
10. It was submitted for the respondent that there is no dispute that the land parcel No Kiirua/Ruiri/5455 was registered in the objector's name as a trustee on behalf of Tigiji Coffee Factory. It was further submitted that the said beneficiary indeed built its headquarters on the suit premises, a fact which has not been controverted by the objector.



11. It was further submitted that the trusteeship ended after the beneficiary applied for transfer in 1998 and the Meru county council approved the transfer of the same. Thereafter the commissioner of lands granted the transfer on behalf of the county council vide the letter dated July 28, 2000 and thereby changed the beneficiary to an absolute owner of the land. Consequently, it was submitted that the land does not fall within the classification of public land since it had been alienated as at the time the 2010 Constitution was promulgated.
12. Finally it was submitted that the minutes of the general meeting held on December 29, 2016 and August 8, 2019 show that cooperative officers from the objector were in attendance and they never raised any objection.
13. The claimant/deed holder associated themselves with the submissions by the respondent and urged the court to dismiss the objection and allow the execution of the decree herein.

Determination

14. Having perused the material presented by the objector and the parties to the suit, it is clear that there is a consent to have the land parcel No Kiirua/Ruiri/5455 attached, subdivided and sold and the proceeds thereof used to settle the decree given by this court in respect of claims of salary arrears and allowances by the respondent's employees. The main issue for determination is whether the objector's notice of objection and the application dated October 26, 2022 should be allowed.
15. The basis upon which an objection can be brought is clearly set out under order 22 rule 51 (1) which provides that:

“Any person claiming to be “entitled to” or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree may at any time prior to payment of the proceed of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.” (emphasis added)
16. In this case the objector has produced herein copy of an abstract title for Ruiri 305 measuring 19.07 acres indicating Meru county council as the registered proprietor absolute *vide* entry No 1 on October 7, 1965. The parcel was reserved for factory area.
17. The objector has also produced another abstract title for land parcel Kiirua/Ruiri/762 measuring 4.97 hectares being a sub division of land parcel No 305. It was registered on November 15, 1971 in the name of Meru county council and again reserved for factory area. Entry number 2 in the title is registration of the respondent herein as the proprietor absolute on August 15, 2000 as a gift. Entry number 3 is on the same date being issuance of the title deed. Entry number 4 is closure of the title due to a sub division on November 14, 2012.
18. The objector further produced an abstract title for Kiirua/Ruiri/5455 measuring 4.925 hectares being a subdivision from land parcel No 762 above. The first entry is registration of respondent herein as the proprietor absolute and without any indication that it was reserved for factory area.
19. The objector contends that the above transactions were illegal and fraudulent and therefore no valid title passed in favour of the respondent. Consequently, the objector maintains that the suit premises remains public land which cannot be attached and sold in execution of the decree herein.
20. The respondent, however has produced minutes of the Meru county council to refute the alleged fraud in the acquisition of the suit premises. Minutes No F S & G P C 25/98 (c) (12) and (13) of the



finance, staff and general purposes committee meeting held on July 2, 1998 approved the respondent's application for allocation of parcel of land out of land parcel No.762 and 438 in Ruiru location for purposes of building Tigiji coffee factory.

21. The resolution by the finance committee above was confirmed by the full council of Meru in a meeting held on 30th July and August 20, 1998 *vide* minute No F C 63/98 (0). The allocation and transfer of the suit premises further received approval from the minister for local government *vide* the letter dated April 17, 2000. Finally, the transfer of the suit premises was done by the commissioner of lands on behalf of county council of Meru as shown by the letter dated July 28, 2000. Hence the registration of transfer from the county council to the respondent on August 15, 2000 as per entry number 2 of the abstract title produced by the objector. The title was issued to the respondent on the same date and it was absolute.
22. From the year 2000 and especially when the respondent was in process of subdividing the suit premises for sale, to settle court decree between 2016 and 2022, the objector never protested or filed suit in the relevant court to stop the process and to challenge the title held by the respondent.
23. The objector has observed and rightly so, that this court has no jurisdiction to determine disputes related title to, and ownership of land as that jurisdiction is conferred to a different court pursuant to article 162 (2) (b) of the Constitution. In this case, I will therefore eschew any temptation to usurp the powers of that other court.
24. Having warned myself that the jurisdiction to determine who is the actual owner of the suit premises and the validity of title to the said land lies elsewhere, I only have limited jurisdiction under order 22 rule 51 of the Civil Procedure Rules to determine whether the objector has made a prima facie case that it is entitled to or it has legal or equitable interest to the attached parcel of land. Considering the material presented to the court on the face value, I am not persuaded by the objector that it is entitled to or it has legal or equitable interest in the land parcel number Kiirua/Ruiru/5455.
25. The said parcel of land was freely allocated to the respondent by the predecessor of the objector in the year 1998 and thereafter transferred and registered in favour of the respondent as the absolute owner on August 15, 2000 with the approval of the minister for local government and the commissioner of lands. Further the ownership of the said land parcel is not the subject matter in any legal proceeding before a court established by the law to determine disputes related to ownership or title to land.
26. In view of the observations and finding made herein above, the notice of objection and the accompanying application are devoid of merits and accordingly they are dismissed with costs to the claimants and the respondent. The effect of this ruling is that the execution of the decree of the court shall proceed.

DATED, SIGNED AND DELIVERED AT NYERI THIS 15TH DAY OF FEBRUARY, 2023.

ONESMUS N MAKAU

JUDGE

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

