



Chemor & another (Suing as Personal Representatives of the Estate of the Late Chemor Chesigary Koibelei - Deceased) v Chemor (Environment & Land Case 499 of 2012) [2024] KEELC 6097 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6097 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 499 OF 2012
EO OBAGA, J
SEPTEMBER 26, 2024**

BETWEEN

KIMAIYO CHEMOR 1ST PLAINTIFF

BARNABA CHUMO CHEMOR 2ND PLAINTIFF

**SUING AS PERSONAL REPRESENTATIVES OF THE ESTATE OF THE LATE
CHEMOR CHESIGARY KOIBELEI - DECEASED**

AND

JOSEPH KIPKOECH CHEMOR DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion date 31.1.2024 in which the Defendant Decree Holder/Applicant seeks the following orders:-
 1. Spent
 2. An order for the Plaintiffs/Judgement Debtors/Respondents by themselves or their agents or servants or other persons or whomsoever to remove themselves and/or be forcibly evicted from the Defendant's /Decree holders parcel of land title No. Moiben/Moiben Block 9 (Barsombe)/319 be and is hereby granted forthwith.
 3. An order be and is hereby granted that the persons in the suit land contrary to the court of Appeal's judgment and order given on 28.6.2019 and issued on 28.3.2022 in the Eldoret Court of Appeal No. 111 of 2015 that set aside this court's judgment and decree given on 25.9.2014 in this court's Environment and land court case No. 499 of 2012 and/or substituted this court's judgment and decree by that Court of Appeal's judgment and decree dismissing this court's suit with costs to the defendant/decree holder/applicant to either remove themselves



and their servants or their agents or whomsoever among other third parties and/or be forcibly evicted.

4. An order that vacant possession of the parcel of land Moiben/Moiben Block 9 (Barsombe)/319 be and is hereby given to the defendant/decreed holder/applicant.
 5. The title deed of the parcel of land Moiben/Moiben Block 9 (Barsombe)/319 that was collected by the plaintiffs/respondents from the Agricultural Finance Corporation (AFC) be and is hereby released to the defendant/applicant forthwith.
 6. The officer in charge of the police station at Ziwa and /or of the Police Post at Segero in the County of Uasin Gishu be and is hereby directed to enforce the court orders, if any, granted by this court in favour of the defendant/applicant.
 7. Costs of this application to the defendant/decreed holder/ applicant.
2. The Applicant states that the judgment Debtors/Respondents filed a suit against him. In a judgement delivered on 25.9.2014, the Respondents succeeded. An appeal against the judgment was preferred to the Court of Appeal. In a judgment delivered on 26.6.2019, the Court of Appeal set aside the judgement of 25.9.2014.
 3. The Respondents had taken title in respect of Moiben/Moiben Block 9 (Barsombe)/319 before the decision of the Court of Appeal. The Applicant is the registered owner of Moiben/Moiben Block 9 (Barsombe)/319. The Respondents had also named this property as part of the Estate of their late father.
 4. The Respondents are cultivating part of the land which now belongs to the applicant. It is on this basis that the Applicant is seeking the orders in this application.
 5. The Respondents opposed the Applicant's application based on a replying affidavit sworn on 12.7.2024. The Respondents contend that the Applicant's application is incompetent and that this court is functus officio having pronounced itself on this matter and that the applicant has not exhausted all avenues of execution.
 6. In a further affidavit sworn on 15.7.2024, the Applicant denies that this court is not functus officio and that the Applicant was not part of the succession cause in Kitale.
 7. The Applicant submits that he is entitled to the prayers in his application now that the Court of Appeal overturned the judgement of 25.9.2014. On the other hand, the Respondents submit that this court is functus officio. They rely on the case of John Gilbert Ouma v Kenya Ferry Services Ltd [2021] eKLR where the doctrine of functus officio was discussed.
 8. I have gone through the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the submission by the parties herein. The only issue for determination is whether the Applicant is entitled to the prayers sought.
 9. There is no doubt that the judgement of the court dated 25.9.2014 was set aside. This means that the suit property remained the property of the Applicant. Even though the property was named as part of the Estate of the deceased, this was before the decision of the Court of Appeal. The Court of Appeal having set aside the judgment of 25.9.2014, the Respondents have no business staying on the Applicant's land. They also have no business holding on to the title deed which they collected from Agricultural Finance Corporation.



10. The application is a Post Judgement application which seeks to complete the process of execution. This court is therefore not functus officio. I find that the Applicant's application is well merited. I allow the same in its entirety.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 26TH DAY OF SEPTEMBER, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Cheptarus for Defendant/Decree Holder.

M/s Rop for Plaintiff/Judgement Debtors.

Court Assistant -Laban

E. O. OBAGA

JUDGE

26TH SEPTEMBER, 2024

