



**Njoroge v Njoroge (Environment & Land Case 3087 of 1981)
[2024] KEELC 6363 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6363 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 3087 OF 1981
LN MBUGUA, J
SEPTEMBER 26, 2024**

BETWEEN

MARGARET ROSE WAMBUI NJOROGE PLAINTIFF

AND

SILVESTER JOHN NJOROGE DEFENDANT

RULING

1. Before me is the Plaintiff's Notice of Motion dated 22.3.2016. The said application was dismissed by this court on 15.9.2017, but the said ruling was set aside by the judgment of the Court of Appeal in Civil Appeal No. 267 of 2018, where the court directed the application to be re-heard.
2. The prayers sought in the aforementioned application are;
 1. That this Application be certified urgent and be heard on priority basis.
 2. That this Honourable Court be pleased to declare the Applicant the sole owner of Land Reference Number Ndeiya/Ndeiya/390 and Plot Number T. 36 "B", Mirithu Market.
 3. That this Honourable Court be pleased to issue an order directing the Land Registrar, Kiambu to register the Applicant the Sole Owner of Land Reference Number Ndeiya/Ndeiya/390.
 4. That this honourable Court be pleased to issue an order directing the County Government of Kiambu to register the Applicant the Sole Owner of Plot Number 36 "B" Mirithu Market, Githunguri Sub-County.
 5. That this Honourable Court be pleased to order the Respondent to pay to the Applicant the sum of Kshs.97,890,000.
 6. That costs of this Application be borne by the Respondent.



3. The application is premised on the grounds on the face of the application and the supporting affidavit of the applicant. She avers that the court vide a judgment delivered on 7.6.2002 decreed that she is entitled to half of or half the sale price of the following properties;
 - a. Land Reference Number Ndeiya/Ndeiya/390
 - b. Land Reference Number 209/66/15
 - c. Plot No. 4A Makutano
 - d. Plot No. 36 Mirithu Market
 - e. Plot No. Ndeiya/kiroe/T.365
 - f. Plot No. Ndeiya/Kiroe/T.197
4. That the respondent was also required to deposit the title properties in court, but he only deposited one tile that is parcel Ndeiya/ Ndeiya/390. And in defiance of the court orders, the respondent sold the following properties;
 - a. Plot No. Ndeiya/Kiroe/T.197
 - b. Plot No. Ndeiya/Kiroe/T.365
 - c. Plot No. 4A Makutano
 - d. A latter Sub-division of Plot no. 36 Mirithu Market being Plot No. 36 “A” Mirithu Market.
 - e. Land Reference Number 209/66/43 and 209/66/44 being latter sub-divisions of Land Reference Number 209/66/15.
5. She contends that the only properties left from the initial inventory decreed by the Court are:-
 - i. Land Reference Ndeiya/Ndeiya/390.
 - ii. Plot No. 36 “B” Mirithu Market, Githunguri Sub County.
7. As a result of the Respondent’s actions, it is now necessary and justifiable that, in the first instance, adjustments be made to the parties’ share in the remaining properties in restitution of the immense loss occasioned by the callous and contemptuous acts of the respondent. Thus the plaintiff should be declared the sole owner of the remaining properties and to be paid half share of the value of the ones unilaterally sold by the respondent.
6. In her submissions dated 23.10.2023, the applicant avers that this court has the powers to grant the orders sought and she cites the case of Peter Mburu Echaria –vs- Priscilla Njeri Echaria Civil Appeal Number 75 of [2001] eKLR where the court opined that:-

“The Court has jurisdiction after the adjudication of the dispute to allocate shares of the disputed property as it may deem just and order the transfer of the share to the rightful beneficial owner to give effect to its decision.”
7. The respondent opposes the application vide his replying affidavit dated 26.6.2024. He avers that by the judgment of the court dated 7.6.2002, the court directed the plaintiff to get half of the following properties; Ndeiya/Ndeiya.390, Plot Numbers 36 and 4A at Mirithu Market and Makutano respectively and Plots on Land Reference number 209/66/15, Nairobi, or half of the sale price of the said properties.



8. He further contends that the Title deed for properties known as Land Reference Ndeiya/Ndeiya/390 and Plot No. 36 “B” Mirithu Market were deposited as per the court orders and he has never collected them to date. That in respect to the property known as Land Reference Number 209/66/15 the same belonged to his late father Njoroge Mwangi.
9. He contends that he was committed to civil jail for a period of six (6) months for failure to deposit the title deed of the said property as it was not in his possession. To date, he doesn’t have that title.
10. He contends that no document has been produced by the Plaintiff/Applicant to show that he sold the properties known as Plot Number 4A Makutano, Ndeiya/Kiroe/T. 365, Ndeiya/Kiroe /T. 197 and 36 “A” and kept proceeds to himself, and as such these remain just mere allegations.
11. He contends that the prayers sought amounts to a review of the said judgment.
12. In his submissions dated 5.7.2024, the respondent takes issue with the filing of the application more than twelve years from the time the judgment was delivered in year 2002. He contends that the claim is hence time barred by the *limitation of Actions Act*. To this end, the cases of Koinange Investments and Development Company Ltd vs Ian Kahiu Ngethe & 3 Others [2015] eKLR. and Joram Ole Tome & Another v. Meshack Ole Tome & Another [2005] eKLR have been cited.
13. The respondent further invokes the doctrine of *functus officio* which bars the court from revisiting the matter on a merit based engagement. To this end, the case of Telkom Kenya Limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited) [2014] eKLR has been proffered.
14. I have considered all the arguments raised herein. The question falling for determination is whether the orders sought in the application dated 22.3.2016 should be granted. It is quite clear that the orders sought amounts to variation of the judgment delivered in the year 2002. A perusal of the record (which is in rather bad shape) paints a grim picture of not only the sour relationship between the protagonists, who were apparently once a couple, but the messy uncertainty of the status of the suit properties. This has culminated in various rulings including the one of 16.7.2012 in which the respondent was claiming that some properties were not his. In yet another ruling of 16.5.2014, the court again revisited the issue of the status of the suit properties.
15. It has also emerged that the respondent was put in civil jail for non-compliance with the judgment. There is also an averment made by both protagonists that title for parcel Ndeiya/Ndeiya/ 390 was deposited in court, though the respondent claims that even title for plot 36 B Mirithu market too was deposited in court.
16. What I discern from the arguments and the records of the court is that any adjustment as the one proposed by the applicant would amount to a re-litigation of the matter all over again yet no review of the judgment has been made to date, thus the said judgement remains intact, undisturbed.
17. In the case of Brian Muchiri Waihenya v Jubilee Hauliers Ltd & another; Geminia Insurance Co. Ltd (Interested Party) [2018] eKLR, the court cited the Court of Appeal case in Telkom Kenya Ltd -s- John Ochanda suing on his behalf and on behalf of 996 former Employees of Telkom Kenya Ltd. [2014] eKLR where it was stated that;

“Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon—“



18. Similarly in *Shollei v Judicial Service Commission & Another* (Application 10 (E016) of 2022) [2023] KESC 8 (KLR) (Civ) (17 February 2023) (Ruling) reference was made to the case of *Jersey Evening Post Limited v A Thani* [2002] JLR 542 at pg 550 where it was stated that:

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available.” [emphasis added].

19. Even though the respondent did not comply with the judgment of the court, what the applicant ought to do is to pursue execution through all possible means, even if it means parcel by parcel. For instance, it has emerged that one of the titles has all along been in court (Parcel Ndeiya/Ndeiya/390). Why didn't the applicant seek the effectuation of the judgment on this parcel instead of seeking to have the whole parcel contrary to the wording of the judgment.

20. As regards the properties which were sold, it was incumbent upon the applicant to demonstrate firstly that the mentioned properties were registered in the name of the respondent and were sold by the said respondent. No document of title in the name of the respondent was availed by the applicant. The document no.2 is a transfer by one Njoroge Mwangi, and refers to parcel title LR.209/66/43, which apparently was a subdivision of parcel 209/66/15. Firstly, the respondent is herein identified as Silvester John Njoroge and not Mwangi Njoroge. Secondly, the evidence of registration of the respondent in parcel 209/66/15 has not been availed.

21. The valuation of the suit parcels can only be interrogated after ascertainment of the registration status otherwise the court may run the risk of entertaining “a wild goose chase”. Thus the claim of Kshs. 97, 890 000 must fail.

22. As the matter stands, this court cannot grant the orders sought in view of the fact that the judgment of year 2002 is still intact. However, in light of the foregoing continuous litigation in this matter, I would not say that the claim of the applicant is time barred.

23. In the end, I find that the application dated 22.3.2016 is not merited, the same is hereby dismissed and each party is to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Hillary Orina for Plaintiff

M/s Theuri for Defendant

Court assistant: Joan

