



REPUBLIC OF KENYA



**Ologolimot & another v Njoroge (Environment & Land Case
238 of 2013) [2025] KEELC 612 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 612 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 238 OF 2013
A OMBWAYO, J
FEBRUARY 14, 2025**

BETWEEN

JULIUS NARANKAIK OLOGOLIMOT 1ST APPLICANT

JOSEPH OLOGOLIMOT 2ND APPLICANT

AND

PETER NJUGUNA NJOROGE DEFENDANT

RULING

1. Enock Ontiri Mobisa, Paul Alfred Angwenyi, David Mugambi Mbuba Gilbert and James Kapira hereafter referred to as the applicants have come to this court by Notice of Motion dated 28th November 2024 in this concluded matter praying for orders that the Court be pleased to make an order enjoining the Applicants herein as Interested Parties in this suit and that this Honorable Court be pleased to issue a temporary stay of execution proceedings herein and all consequential Orders issued pending the hearing and determination of this application. He further prays that this Honorable Court be pleased to set aside the judgement entered herein against the Defendant and do direct that this matter be heard afresh with the full participation of the Applicants as Interested Parties. Ultimately, costs of this Application be provided for.
2. The application is based on grounds that the suit herein was commenced against the Defendant and prosecuted by the Plaintiff claiming ownership of the Land known as Title No. Mara/Enabelbel/Enengetta/970. The said Land is actually owned by the Applicants/ Interested Parties having purchased the same after subdivisions were undertaken by the registered owner, the Defendant named herein. According to the applicants, the judgment passed herein in favour of the Plaintiff is erroneous and incapable of implementation as the Land being claimed by the Plaintiff/Judgment creditor is in occupation of the Applicants and with legally and procedurally issued Titles thereto.



3. The Plaintiff ought to have enjoined the Applicants and others who are on the Land at the Institution of this Suit since he was fully aware of the applicant's occupation of the suit Land.
4. The applicants stand to be extremely prejudiced in loss of their Lands if the Decree issued herein is executed against the Defendant. In the interests of justice and fair play the applicants should be enjoined in this Suit and be accorded an opportunity to ventilate their grievances vis a vis the Plaintiff's claim against the Defendant.
5. The application is supported by supporting affidavit of Enock Ontiri Mobisa who states that he is a registered owner of a parcel of Land Title No. Mara/Enabelbel/Enenetia/970. The 2nd, 3rd and 4th applicants are also the registered owners of the Parcels of Land on the said Title No. Mara/Enabelbel/Enenetia/970 and they shall be providing evidence in support thereof. The existence of the suit herein has been brought to their attention and upon carrying out investigations they have established that the Decree issued herein and all consequential orders touches on the properties Registered in the applicants' names herein.
6. The Decree passed by this Honorable Court will extremely prejudice the Applicants' respective rights to their properties that will affect and lead to loss of our properties.
7. The judgment passed herein is tantamount to condemning the Applicants on the right to their properties without being first heard in contravention of the principles of natural justice. In the interests of justice and fair play he beseechs this Honorable Court to grant the Orders prayed for herein as the Applicants stands to suffer loss of their respective properties if the Decree passed herein is executed and implemented. The respondents have replied to the application and opposed the application on grounds that none of the Applicants has set out his interest on the subject parcel of land and if such an interest has been set out, it must be identifiable and it must be proximate enough rather than being peripheral. The prejudice to be suffered by the intended Interested Parties in ease of non-joinder must be demonstrated to the satisfaction of the Court and it must be outlined in very clear particulars. Enock Ontiri Mobisa says that he is the registered owner of land parcel No.CIS-Mara/Enabelbel/Enenetia/970 and he does not exhibit any evidence of such registration, an official search, or any extract of a Title of the land in his name .Enock Ontiri Mobisa further states at paragraph 4 of his Supporting Affidavit that 3rd and 4th Applicants (Intended.' Interested Parties) are also registered proprietors of land. parcel No. Mara/ Enabelbel/Enenetia/970 but he does not show any iota of evidence of such ownership or registration by way of a copy of the Title Deed, copy of an official search or a Green Card. The Decree in this matter is all about the excursion of Thirty acres from the Defendant's parcel of land known as CIS-Mara/Enabelbel/Enenetia/279 and not Mara/Enabelbel/Enenetia/970 Judgement in this case was entered by consent between the plaintiff and the defendant long ago and all the Defendant's attempt to set aside, vary, review, or discharge the consent became a cropper even after going to the court of Appeal, There exist several Rulings on record in this case.
8. Ultimately the Court ordered the Defendant to have the portion registered in his name transferred to me voluntarily in default all the document be and were signed by the Hon Deputy Registrar and the portion of 1 9 Acres registered as CIS-Mara/Enabelbel/Enenetia/970 Was effectively registered in the plaintiffs name as per copy of the Title Deed attached.
9. As per the Decree the plaintiff is still pursuing the Defendant to transfer the remaining acres of land, and in addition thereto he pays him all the costs of this case.
10. According to the plaintiff, the Applicants (Intended Interested Parties) they have not made out a case for their joinder in this case as interested parties and therefore the application dated 28th November 2024 lacks merit, it should be dismissed with costs. It is shallow and a show of lack of any seriousness



on the part of the Applicants to state that they shall at some undisclosed later days provide evidence of ownership of the land. This Application is aimed at slowing down the execution process and is brought by the Defendant's "protégés" with the sole aim of delaying finalization of this case.

11. I have considered the application and do find that the applicants have not annexed in the application a scintilla of evidence that they have any right in the suit property. The orders sought by the applicants have very serious ramification and therefore this court would expect documents to demonstrate proprietary interest. The supporting affidavit is very shallow and does not even give the relationship between the parcel no CIS-Mara/Enabelbel/Enenetia 970 And Cismara/Enabelbel/Enenetia 279.
12. The conditions for enjoining a party in a suit were set out in the Supreme Court of Kenya in the case of Francis Kariuki Muruatetu & Another v Republic & 5 others Petition 15 as consolidated with 16 of 2013 [2016] eKLR set forth the elements applicable as follows:...One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:
 - (i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
 - (ii) The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. (iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.
13. In the matter before me the applicants have not demonstrated their personal stake or interest in the matter by producing title documents or sale agreements. The applicants have not demonstrated any prejudice to be suffered if the application is not allowed. The matter has been in court for more than 10 years before judgment and therefore it is the plaintiff to suffer prejudice if the orders sought are granted. The upshot of the above is that the application lacks merit and is dismissed with costs.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT DATE: 2025-02-14 12:51:14

