



**Kananu v Arujah & 4 others (Environmental and Land Originating Summons
16 of 2018) [2024] KEELC 7237 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7237 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 16 OF 2018
CK NZILI, J
OCTOBER 23, 2024**

BETWEEN

JANET KANANU PLAINTIFF

AND

JOHN THURANIRA ARUJAH 1ST DEFENDANT

SHEILA GACHERI THURANIA 2ND DEFENDANT

DUNCAN KITHINJI THURANIRA 3RD DEFENDANT

MUREITHI ARUJAH 4TH DEFENDANT

MARTIN KINOTI ARUJAH 5TH DEFENDANT

RULING

1. The court is asked to lift the inhibition orders on L.R No. Nyaki/Mulathankari/216 (the suit land) and to order for the demolition of structures put up by the judgment debtor on the suit land, subsequent to the judgment dated 10.5.2023 and the O.C.S Giaki to provide security during the exercise. In the supporting affidavit sworn on 4.9.2024, John Thurania Arujah, the decree-holder, says that after the order of the court was issued for the land registrar to visit the land, establish the nature of the encroachment and to fix the boundaries between L.R Nos. 216 and 17, the same was done by the land registrar and the land surveyor as per a report dated 13.3.2024 marked J.T.A. "2"
2. It is averred that the two land officials established that the respondent lies on L.R No. Nyaki/Mulathankari/71 and was only farming on L.R No. Nyaki/Mulathankari/216. Following this, it is averred that the plaintiff/respondent moved into L.R No. Nyaki/Mulathankari/216 and started erecting a semi-permanent structure thereon as per a photo attached as J.T.A. "3". The applicant depones that he made a report at Giaki Police Station as per O.B. No. 14/31/07/2024.



3. The applicant avers that the respondent intends to trash and render useless the decree of this court dated 27.6.2023, unless the court corrects the illegality by granting the orders sought. Equally, the applicant avers that since the court had issued inhibition orders on 15.10.2019, the same should persist pending the hearing and determination of this suit as per a copy of an official search attached as JT A "5".
4. The application is opposed through a replying affidavit sworn by Janet Kananu dated 20.9.2024 for being malicious, ill-intentioned; misleading; an abuse of the court process, and filed with a view of denying her well-defined interests in the suit land. The respondent avers that L.R No. 216 is where she farms for her livelihood and has established a home as the only place since 1986, where her late husband and children know as home as per annexed photo marked J.T.A. "1". Further, the respondent avers that she wonders why the land registrar's report would only capture farming activities, and yet the appellant seeks to demolish her structures, putting into doubt the integrity of the report.
5. Similarly, the respondent avers that she was never notified of the site visit; it was conducted secretly, contrary to the law, and allowing the report to stand would amount to a breach of her rights. She also avers that as per the law, such a report could only be undertaken in her presence which was not and the court and the court should summon the land registrar for cross-examination on the report, which is also replete with errors of law and was conducted in her absence as a proper party to the issue.
6. The respondent avers that the applicant had come to court with dirty hands for intermeddling with the estate of a deceased person, yet they had acknowledged that they were willing to allocate her land after filing a probate cause. The respondent avers that the prayer for the removal of the inhibition is still motivated to defeat her interest and should, therefore, not be lifted until the veracity of the registrar's report is established; otherwise, the applicant was out to disinherit her without a reasonable basis.
7. In a supplementary affidavit dated 23.9.2024, the applicant avers that the matter is already finalized, and the respondent was attempting to re-open the suit through the back door by raising issues already dealt with at the trial. The applicant avers that the site visit complied with the judgment in the presence of all parties, the respondent included. The applicant reiterates that at the site visit, the land registrar and surveyor confirmed the respondent's houses appearing on J.T.A "1" were not on his land but were put up after that of the respondent to validate her claim on the land; otherwise, she was being mischievous in order to circumvent the judgment.
8. Again, the applicant avers that she has no interest in L.R No. Nyaki/Mulathankari/71, where the respondent and her children live for he cannot disinherit her.
9. On 15.10.2019, this court issued an inhibition order at the request of the respondent until the suit was heard and determined. Under Section 70 of the *Land Registration Act*, a court has powers to lift or vacate an inhibition order on the expiration of its time or occurrence of an event that it had sought to prevent. In this file, the occurrence of the event occurred after the judgment of the court on 10.5.2023. There is no basis shown to sustain it for the reason that I shall state shortly.
10. Following the judgment, the court gave directions that the land registrar exercises its powers under Sections 14-19 of the *Land Registration Act* regarding L.R Nos. Nyaki/Mulathankari/216 and 71. This court became functus officio once it pronounced itself on the issues before it based on the pleadings on adverse possession. The respondents had denied occupation of the suit land by the plaintiff. They had no counterclaim against the plaintiff for any alleged illegal cultivation on L.R No. 216.
11. After a boundary has been ascertained and fixed under the law, any party dissatisfied with the report must move the court to challenge the report. See *Estate Sonrisa Ltd & another vs Samuel Kamau*



Macharia & others (2020) eKLR. Before this court, there was no substantive suit other than an application seeking for demolition of structures that were found on the land during the land registrar's site visit as per the report dated 13.3.2024. See *Azzuri Ltd vs Pink Properties Ltd* 2018 (eKLR). There is no evidence of compliance of the intended eviction with the law on eviction.

12. The respondents, on the other hand, in the replying affidavit, seek the summons to issue to cross-examine the land registrar on the veracity of the report. The court has already pronounced itself on the issues that came up during the appeal. The decree was to the effect that the respondent's suit for adverse possession stood dismissed. There was no decree holder and a judgment debtor other than the order to ascertain and fix the boundaries. The court has no jurisdiction to re-open the matter and deal with issues that ideally do not fall under post-judgment execution proceedings. The upshot is that except for the prayers for lifting the inhibitions, the rest are dismissed with no order as to costs. File closed.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 23RD DAY OF OCTOBER, 2024

In presence of

C.A Kananu/Mukami

Kariuki for applicant

HON. C K NZILI

JUDGE

