



Kiriko Farmer Mau Summit Company Limited v Registrar & another (Miscellaneous Application 8 of 2023 & E006 of 2021 (Consolidated)) [2024] KEELC 6876 (KLR) (22 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6876 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
MISCELLANEOUS APPLICATION 8 OF 2023 & E006 OF 2021 (CONSOLIDATED)
MAO ODENY, J
OCTOBER 22, 2024

BETWEEN

KIRIKO FARMER MAU SUMMIT COMPANY LIMITED APPLICANT

AND

LAND REGISTRAR 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 4th August, 2021 by the Applicant seeking the following orders:
 - a. Spent
 - b. The Honourable Court be pleased to grant an order directing the Land Registrar to update the register to reflect the actual position of ownership of land of Kiriko Farmers Mau summit Company limited.
 - c. Any other order as the court may deem fit to grant.
 - d. Costs.
2. The application was supported by the annexed affidavit of Paul Ndege Gitau, a Director of the Applicant herein who deponed that around 1968, the Applicant purchased all that property number 2684 measuring 1096 acres situated in Subukia, which was subsequently surveyed and distributed to all the Applicant's members. He deponed that upon distribution, each member received three parts of the subdivisions measuring approximately 2 acres, 0.5 acres and 0.2 acres.
3. It was the Applicant's case that the members immediately took possession of their above said three parcels of land and have settled and/or developed their respective properties. He also stated that



sometime in 2019, the Applicant's members realized that the register in the custody of the 1st Respondent in relation to their above said properties was outdated and it did not reflect the actual ownership of members and new buyers.

4. According to the Applicant, there is a need to update the register to reflect the true position of ownership on the ground of which all the members have consented to have the register rectified as sought.
5. The 1st Respondent filed a Replying Affidavit dated 20th November 2023, sworn by C.A. Liyayi who deponed that their office received a members' register (Kieseges/Nyamamithi/Block 5 (Kiriko) from the Applicant which was used to issue over 900 title deeds to different proprietors. He deponed that updating the register will affect people who have already been issued with titles hence the Applicant has to convince those with titles to consent to the changes and surrender these titles to enable the Land Registrar effect the amendments.
6. The 1st Respondent further stated that the Applicant filed Nakuru ELC Miscellaneous App E006 of 2021 seeking similar orders where they sought time to consult the 1st Respondent but it is clear that nothing can be done until the 900 already issued Title Deeds were surrendered.
7. The 1st Respondent further deponed that the Applicant has neither availed a copy of the resolution by members to have the register amended nor documents to prove that the company is still operational. The Respondent stated that the Applicant has not proved they had an Annual General Meeting as proof of the directorship of Mr. Paul Ndege Gita and urged the court to dismiss the application with costs.
8. The parties did not file submissions as directed by the court.

Analysis And Determination

9. The issue for determination is whether the Land Registrar should be ordered to update the register to reflect the actual position of ownership of Kiriko Farmers Mau summit Company limited land.
10. The 1st Respondent deponed that their office received a members' register (Kieseges/Nyamamithi/Block 5 (Kiriko) from the Applicant which was used to issue over 900 title deeds to different proprietors.
11. According to the Land Registrar, updating the register will affect people who have already been issued with titles and therefore the Applicant has to convince those with titles to consent to the changes and surrender these titles to enable the Land Registrar effect the amendments. The Applicant on the other hand deponed that all its members have consented to have the register rectified as sought.
12. The power to rectify any register or title is vested in the Land Registrar under Section 79 of the [Land Registration Act](#) No. 3 of 2012. Section 79 (1) provides thus:
79(1) The registrar may rectify the register or any instrument presented for registration in the following cases:
 - (a) In formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;
 - (b) In any case and at any time with the consent of all affected parties; or
 - (c) Upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel.



13. In this case, the Applicant states that all the members have consented to the rectification of the register but the Applicant has not annexed the said consent. It is also on record that the rectification will affect other parties and that the 900 titles already issued must be surrendered for such exercise to be done. There is no indication that the owners of the 900 titles are ready and willing to surrender their titles for rectification.
14. The court had ordered that the Regional Surveyor carries out a survey and file a report within 30 days but the same was not followed through. This matter has been mentioned severally with no progress on the filing of a survey report. We cannot keep on mentioning this case for no apparent purpose with the applicant not taking an active role in the resolution of this matter.
15. This application is therefore dismissed with no orders as to costs for the above reasons.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 22ND DAY OF OCTOBER 2024.

M. A. ODENY

JUDGE

