



**Shunkur v Rigogo Chonjo Company Ltd & 3 others (Being former Chairperson, Current Chairperson and former member respectively of Chepnyaliliet Self Help Group) (Environment & Land Case 9 of 1993) [2024] KEELC 13328 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13328 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE 9 OF 1993  
LA OMOLLO, J  
NOVEMBER 21, 2024**

**BETWEEN**

**DAVID KAPOLONTO SHUNKUR ..... PLAINTIFF**

**AND**

**RIGOGO CHONJO COMPANY LTD ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH KITUR ..... 2<sup>ND</sup> DEFENDANT**

**SAMUEL KIPLANGAT ..... 3<sup>RD</sup> DEFENDANT**

**JOSPHAT NGETICH ..... 4<sup>TH</sup> DEFENDANT**

**BEING FORMER CHAIRPERSON, CURRENT CHAIRPERSON AND  
FORMER MEMBER RESPECTIVELY OF CHEPNYALILIET SELF HELP GROUP**

**RULING**

**Introduction.**

1. This ruling is in respect of the Plaintiff/Applicant’s Notice of Motion application dated 14<sup>th</sup> August, 2024. The application is expressed to be brought under Sections 99 & 100 of the Civil Procedure Act, Order 45 Rule 2 of the Civil Procedure Rules and Rule 9 of the Auctioneers Rules.
2. The application seeks the following orders;
  - a. Spent
  - b. That this Honourable Court be pleased to review the eviction order issued by the 10<sup>th</sup> November, 2023 (sic) and the same to be directed to the Officer Commanding Station (OCS) Melelo Police Station instead of the Officer Commanding Station (OCS) Olulunga Police



Station to provide adequate security to M/s Indomitable Auctioneers during the enforcement of the judgement and decree of this Court.

- c. That costs of this application be provided for.
3. The application is based on the grounds on its face and the supporting affidavit of one David Kapolonto Shinkur.

### **Factual Background.**

4. The Plaintiff/Applicant commenced the present proceedings vide the Plaint dated 19<sup>th</sup> February, 1993. It was amended on 3<sup>rd</sup> March, 2005 and further amended on 29<sup>th</sup> April, 2005.
5. The Plaintiff/Applicant in his further amended Plaint dated 29<sup>th</sup> April, 2005 sought the following orders;
  - a. A. A declaration that the first Defendant obtained registration of LR No. Narok/Cis-Mara/Olulunga/134 fraudulently.
  - b. An order that the First Defendant do deposit the title deed relating to the said land in Court and the same be nullified as against the Defendant and registered in favour of the Plaintiff.
  - c.(b) An order that the Chepnyaliliet Self Help Group do deposit the title deed relating to LR No. (AA) Narok/Cis-Mara/Olulunga/134 (sic) in Court and the same be nullified as against the said Group and the said land be registered in favour of the Plaintiff's name.
  - d.(c) A declaration that Chepnyaliliet Self Help Group represented by the second, third and fourth Defendants is a trespasser on the aforesaid land and an eviction order be issued against the Group.
  - e. General Damages.
  - f. Costs of this suit.
  - g. Interest on (d) and (e) above at Court rates.
6. The Defendants/Respondents filed their statement of defence dated 10<sup>th</sup> March, 2004 which was amended on 6<sup>th</sup> June, 2005 and further amended on 17<sup>th</sup> March, 2010.
7. The Defendants denied the averments in the Plaint and sought that the Plaintiff's suit be dismissed with costs.
8. The Court in its judgement delivered on 26<sup>th</sup> June, 2014 allowed the Plaintiff/Applicant's claim in terms of prayers (a) A, (b) A, (b) AA, (c) and (e).
9. The application under consideration first came up for hearing on 15<sup>th</sup> August, 2024 when the Court observed that the application had not been brought under the vacation rules and directed the Plaintiff/Applicant to fix a date for hearing in the registry.
10. The application came up for hearing on 16<sup>th</sup> October, 2024 when it was reserved for ruling.

### **The Plaintiff/Applicant's Contention.**

11. The Plaintiff/Applicant contends that this Court delivered judgement in this matter on 26<sup>th</sup> June, 2014 in his favour. The Court found that the Defendants/Respondents were trespassers on land parcel No. Narok/CIS-Mara/Olulunga/134 and issued orders of eviction.



12. He also contends that the 2<sup>nd</sup> Defendant/Respondent filed Nakuru Civil Appeal No. 223 of 2014 against the said judgement which appeal was dismissed on 27<sup>th</sup> March, 2019.
13. He further contends that he had filed the application dated 2<sup>nd</sup> November, 2023 seeking for an order that security be provided by the Officer Commanding Police Station Olulunga Police Station during the eviction. The order was issued on 10<sup>th</sup> November, 2023.
14. It is his contention that the said orders were served upon the Officer Commanding Police Station Olulunga Police Station on 15<sup>th</sup> November, 2023. The OCS acknowledged service and stated that the suit property falls within the jurisdiction of Melelo Police Station. The OCS advised him to seek orders directing the Officer Commanding Police Station Melelo Police Station to enforce the same.
15. It is further his contention that he is advised by his Advocates on record that there is an error and/or mistake apparent on the face of the order issued on 10<sup>th</sup> November, 2024 and that the same should be reviewed to reflect the Officer Commanding Police Station, Olulunga Police Station.

### **The Defendants/Respondents Response**

16. In response, the Defendants/Respondents filed a Replying Affidavit sworn by Samuel Kiplangat the 3<sup>rd</sup> Defendant/Respondent on 11<sup>th</sup> October, 2024.
17. He deposes that the Plaintiff/Applicant had filed the application dated 2<sup>nd</sup> November, 2023 which was heard in their absence and the Court issued an order that the Officer Commanding Police Station Olulunga provides adequate security to M/s Indomitable Auctioneers and/or its agents to evict, demolish all structures and restrain the Defendants and all the members of Chepnyalilet Self-Help Group and their agents and/or employees on land parcel No. Narok/CIS-Mara/Olulunga/134.
18. He also deposes that the Plaintiff/Applicant unlawfully obtained an eviction order from this Honourable Court on 10<sup>th</sup> November, 2023 against the 2<sup>nd</sup> to 4<sup>th</sup> Defendants/Respondents.
19. He further deposes that the eviction order was issued in a hasty manner. He adds that the Court of Appeal had initially granted the property to the 2<sup>nd</sup> to 4<sup>th</sup> Defendants/Respondents before later giving it to the Plaintiff/Applicant.
20. It is his deposition that there is an application for review that is currently pending before the Court of Appeal which if successful will render the eviction superfluous but the damage will have irreversibly occurred against the 2<sup>nd</sup> to 4<sup>th</sup> Defendants/Respondents.
21. He reiterates that the eviction order was obtained without proper service since the Plaintiff/Applicant served the Defendants/Respondents through koceyoadvocates@gmail.com instead of the firm's email which is info@koceyoadvocates.org. He adds that the process server in his affidavit of service evidences this improper service and yet all the pleadings in this matter bear the correct email.
22. It is also his deposition that the said order of eviction goes against the provisions of the Land Act which require 90 days notification before the eviction can occur.
23. It is further his deposition that the eviction order obtained by the Plaintiff/Applicant requires the immediate eviction and destruction of property of all the families living on the suit property. He adds that approximately 6000 households live on the property and have no where else to go.
24. He deposes that the Plaintiff/Applicant misdirected this Court by stating that the Court of Appeal upheld this Honourable Court's judgement that had been delivered on 26<sup>th</sup> June, 2014.



25. He also deposes that while the Court of Appeal in its judgement delivered on 27<sup>th</sup> March, 2019 dismissed the said appeal, it did not uphold this Honourable Court's judgement.
26. He refers to portions of the judgement of the Court of Appeal and deposes that as at 16<sup>th</sup> June, 1993, the suit property was registered in the name of the 1<sup>st</sup> Defendant/Respondent. He adds that the 2<sup>nd</sup> to 4<sup>th</sup> Defendants/Respondents purchased the suit property from the 1<sup>st</sup> Defendant/Respondent vide an agreement dated 19<sup>th</sup> June, 1992 at an agreed purchase price of kshs. 800,000/=.
27. It is his deposition that the evidence of the 1<sup>st</sup> Defendant/Respondent was that it had indeed sold the suit property to the 2<sup>nd</sup> to 4<sup>th</sup> Defendants/Respondents and the sale was therefore not disputed.
28. It is also his deposition that a reading of the Court of Appeal judgement shows that the Court did not dispute that the suit property was sold to the 1<sup>st</sup> Defendant/Respondent and that as at 16<sup>th</sup> June, 1993 the suit property was registered in its name.
29. It is further his deposition that it is however unclear why the Court of Appeal went ahead and dismissed the appeal. He reiterates that they filed an application for review which is still pending before the Court of Appeal.
30. He deposes that it is prudent to wait for the Court of Appeal's decision which will conclusively determine the ownership of the property and therefore eviction at this time is premature.
31. He also deposes that what appears to be the issue is the transfer of the suit property to the 2<sup>nd</sup> to 4<sup>th</sup> Defendants/Respondents while a restriction had been registered on the suit property.
32. He further deposes that pursuant to the Court of Appeal's judgement, the 2<sup>nd</sup> to 4<sup>th</sup> Defendants/Respondents applied for the removal of the restriction in order to have the property lawfully registered in their name.
33. It is his deposition that after the removal of the restriction, the 2<sup>nd</sup> to 4<sup>th</sup> Defendants/Respondents begun the process of subdividing the property but they were stopped by the Plaintiff/Applicant who claimed that he was the rightful owner vide the judgement delivered on 27<sup>th</sup> March, 2019.
34. He reiterates that their application for review of the Court of Appeal judgement is pending and that the Plaintiff/Applicant's actions are tainted with illegality which this Court should not countenance.
35. He ends his deposition by stating that the Plaintiff/Applicant's actions ought to be brought to an end as a matter of urgency and that the instant application is an abuse of the Court process and amounts to forum shopping.
36. Neither of the parties filed submissions to the application.

### **Analysis and Determination**

37. I have considered the application and the response thereto.
38. It is my view that the only issue that arises for determination is whether the Court should review the orders issued on 10<sup>th</sup> November, 2023.
39. Section 80 of the *Civil Procedure Act* provides as follows;

“ Any person who considers himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or



- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

40. Order 45 Rule 1 of the Civil Procedure Rules provides as follows;

- “(1) Any person considering himself aggrieved—
  - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
  - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the Court which passed the decree or made the order without unreasonable delay.”

41. Section 80 of the *Civil procedure Act* and Order 45 Rule (1) of the Civil Procedure Rules provide that when a party intends to seek review of an order made by the Court, the said party may apply to the Court which made the said order.

42. In the present matter, the Plaintiff/Applicant is seeking that this Court reviews the orders issued on 10<sup>th</sup> November, 2023 and an order be issued directing the Officer Commanding Police Station Melelo Police Station instead of the Officer Commanding Police Station Olulunga Police Station.

43. A perusal of the Court record shows that the orders issued on 10<sup>th</sup> November, 2023 were issued by Hon. F.M Nyakundi the Deputy Registrar.

**Disposition.**

44. It is my view that it is only the Deputy Registrar who can review orders that are issued by him and the present application ought to have been placed before him.

45. That being the case, the application dated 14<sup>th</sup> August, 2024 is hereby struck out with no order as to costs.

46. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2024.**

**L. A. OMOLLO**

**JUDGE.**

**In the presence of: -**

Parties - Absent

Court Assistant; Mr. Joseph Makori.

