



Omayo v Gusii Farmers Coffee Co-operative Union Limited & another (Environment & Land Case 1 of 2021) [2024] KEELC 13201 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13201 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 1 OF 2021
JM KAMAU, J
NOVEMBER 14, 2024**

BETWEEN

PETER ONDARI OMAYO PLAINTIFF

AND

**GUSII FARMERS COFFEE CO-OPERATIVE UNION LIMITED 1ST
DEFENDANT**

ROBERT GN MAINYA 2ND DEFENDANT

RULING

1. The Application dated 15/7/2024 by the Plaintiff/Decree Holder seeks the following orders: -
 1. That this matter be certified urgent and fit to be heard and determined ex-parte.
 2. That execution of the judgment and decree of this Honourable court be actualized vide an order curving and vesting of (10) acres out of L.R. Nyansiongo/Gesima Block 1/Simbauti/353 in form of excision of 10 acres thereof and effecting of transfer of the subject 10 acres into the name of Peter Ondari Omayo, the judgment creditor herein.
 3. That the land parcel so excised measuring 10 acres be and is hereby transferred into the name of the PEter Ondari Omayo in settlement and satisfaction of the decree of this honorable court made on 15th November, 2023 and issued on 23rd January, 2024 respectively.
 4. That the sub-division and creation of the subject title deed measuring 10 acres be curved out and implemented by the County Land Registrar, Nyamira County and the County Surveyor, Nyamira County jointly and severally without delay.
 5. That 10 acres be and is hereby ordered to be curved from land parcel number Nyansiongo/ Gesima Block 1/Simbauti/353 or any resultant off-shoot as per record maintained and existing



at the Lands office Nyamira County in satisfaction of the judgment/decree of this honorable court.

6. That costs of this application be provided for.
2. The same is buttressed on the Grounds hereunder:
 - a. This Honourable court delivered judgment herein on the 15th November, 2023 and a decree thereof issued on 23rd January, 2024 in favour of the Plaintiff/Applicant/Judgment creditor.
 - b. The Title Nyansiongo/Gesima Block 1/Simbauti/353 is the offshoot of the several subdivisions of land parcel L.R No.7487/2 and or Gesima Block 1(Simbauti)/167 registered in the name of the Judgment Debtor.
 - c. The 10 acres be curved from the land parcel Nyansiongo/Gesima Block 1/Simbauti/353 or any resultant off-shoot as per the records maintained at the lands office Nyamira County in satisfaction of the judgment/decree of this Honourable court.
 - d. The Land Registrar and the County Surveyor all of Nyamira County be ordered to ensure subdivision of Nyansiongo Gesima Block 1/Simbauti/353 to create a title from land parcel known as Nyansiongo/Gesima Block 1/Simbauti/353.
 - e. It will serve the wider interest of justice to grant the orders sought herein.
 - f. No prejudice whatsoever or at all shall be visited upon the Defendant/Respondent if the application herein is allowed.
 3. and also the following facts by the Plaintiff/Applicant vide his Supporting Affidavit sworn on 15/7/2024 reproduced as follow:
 1. That this Honourable court delivered judgment herein on the 15th November, 2023 and decree thereof issued on the 23rd January, 2024 in my favour. (Attached herein and marked POO-1 is a copy of the judgment and the decree issued attesting as much)
 2. That the substantive suit I filed herein displays in the pleadings and in the list of documents the land parcel L.R. No.748/2 which changed to Gesima Block 1(Simbauti)/167 before the sub-sequent sub-divisions.
 3. That the land parcel L.R. NO.748/2 which changed to Gesima Block 1(Simbauti)/167 has undergone several sub-divisions over time and titles created.
 4. That the title Nyansiongo/Gesima Block 1/Simbauti/353 is the offshoot or apex of the several sub-divisions of land parcel L.R NO.748/2 or Gesima Block 1(Simbauti)/167.
 5. That therefore, 10 acres be curved out from the land parcel known as Nyansiongo/Gesima Block 1/Simbauti/535 in satisfying the judgment/decree issued by the honourable court.
 6. That the Land Registrar Nyamira County and the County Surveyor Nyamira County should thus cause the sub-division and creation of title in my name measuring 10 acres from land parcel Nyansiongo/Gesima Block 1/Simbauti/353.
 7. That I implore/urge this Honourable court to invoke its inherent/unfettered jurisdiction by granting the orders sought in the application so as to bring litigation to an end by allowing me to access the fruits of Judgment from myself.



8. That the Defendants/Judgment Debtor have not demonstrated any circumstance to warrant any delay or withholding of the fruits of judgment from myself.
 9. That it will serve the wider interest of justice to grant the orders sought herein.
 10. That no prejudice whatsoever or at all shall be visited upon the defendant/respondent if the application herein is allowed.
4. In the Affidavit in Opposition to the Application by the 2nd Respondent sworn on 8/8/2024, Robert G. N Mainya depones that the Respondents/Judgement Debtors have already filed an Appeal and that the respective parties through their corresponding Advocates entered into a Consent which reads:-
1. That the Title Number Nyansiongo/Gesima Block 1/Simbauti/ 353 be and is hereby certified and confirmed to be the off-shoot of initial Land Title Number LR. 7487/2 and later Gesima Block 1/Simbauti/167, on which the Plaintiff's suit and claim is predicated.
 2. That the Title Nyansiongo/Gesima Block 1/Simbauti/353 be and is hereby deposited, accepted and retained in the custody of this Honourable court as security pending the Hearing and determination of processes attendant to the Notice of Appeal dated 24th November 2023, and pending the Hearing of the application thereto in Miscellaneous Application No. E003 of 2024, at the Court of Appeal Kisumu.
 3. That the Land Title so deposited do remain in the custody and record of this Honourable court to serve the purpose of the Notice of Appeal herein and the Judgment of the court dated 15th November 2023 and decree thereof.
 4. Costs in the cause.
5. The same was filed in Court on 5/4/2024 and that the Respondents are taken aback by the Decree Holders' Application which is therefore an abuse of the process of this court and ought to be dismissed with costs.
6. Parties are not only bound by their pleadings but also by any Consents they record in Court. I hereby order that the consent dated 28/3/2024 be adhered to on condition that the Court be availed within 7 days copies of Green Cards in respect of Title Numbers L.R. NO. 7487/2 and Nyansiongo/Gesima Block 1/Simbauti/353 and 167 to confirm that the Respondents' contention that the same are related, one and the same parcel of land and that the ownership is the same. Further, there must be proof that the Title (s) is/are truly deposited in Court. There should also be proof that the land in question particularly what has been adjudged to belong to the Decree Holder is vacant. In default of any of the above conditions the orders prayed for in the Application dated 15/7/2024 will be automatically deemed to be granted.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 14TH DAY OF NOVEMBER, 2024.

MUGO KAMAU

JUDGE

In the Presence of:

Court Assistant: Brenda

Plaintiff's Counsel: Ms. Nyaboke

Defendants' Counsel: Mr. Onsarigo

