



REPUBLIC OF KENYA



Mbuga & another v Mochache & 3 others (Environment & Land Case E011 of 2024) [2024] KEELC 7491 (KLR) (13 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7491 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E011 OF 2024**

**JM KAMAU, J
NOVEMBER 13, 2024**

BETWEEN

GRACE KWAMBOKA MBUGA 1ST PLAINTIFF

WESLEY OTIERI 2ND PLAINTIFF

AND

JENIFER NYABOKE MOCHACHE 1ST DEFENDANT

EVANS ANYONA MOGAKA 2ND DEFENDANT

MONICA MOTUKA ONG'ERA 3RD DEFENDANT

JANE MORAA KABESA 4TH DEFENDANT

RULING

1. In this suit the Plaintiff vide Plaintiff dated 30/4/2024 prays for Judgement against the Defendant for:-
 - a. The demarcation of the boundary between Land reference No. Lietego Settlement Scheme 1404 and Lietego Settlement Scheme/405 by the County Land Registrar and County Surveyor Nyamira County.
 - b. Eviction of the 1st Defendant from Land Reference No. Lietego Settlement Scheme/404 and the demolition of the structures she has put up thereon.
 - c. The Officer Commanding Manga police station to supervise the exercise(s).
 - d. Costs of the suit.
2. In the statement of Defence by the 2nd, 3rd and 4th Defendants dated 2/7/2024 the said Defendants aver that they have nothing to do with the Plaintiff's claim. They admit owning LR NO. Lietego Settlement Scheme/404 which they also claim that the 1st Defendant has encroached onto. In fact the



3 Defendants make admission to the Plaintiff's claim as contained in the Plaint. On the other hand, the 1st Defendant vide her Defence dated 31/7/2023 which is also attached to a Counter Claim first raises the issue of locus in that the mother Title i.e. Lietego Settlement Scheme/82 belongs to the Estate of the late James Ongera Otieri whose daughter in law she is and which is yet to be distributed. She also prays that she be registered the proprietor of the suit land by virtue of adverse possession. She equally admits that there were discrepancies in the mutation during the surveying of L.R. No. Lietego Settlement Scheme/82 and that there have not been any known attempts to resolve the boundary, if any. She refers to the Land Registrar's/Nyamira Director of Survey's letter dated 5/6/2023 to have the division of the same done afresh. In their Defence to the 1st Defendant's Counterclaim, the 2nd, 3rd and 4th Defendants aver that the sub-division of L.R. NO. Lietego Settlement Scheme/82 was done on 8/10/2008 long before James Ongera Otieri passed away on 13/4/2014 and that the sub-divisions therefrom does not form part of the Deceased's Estate. They also produced an order and proceedings from Keroka Principal Magistrate's court Misc. Application No. E016 of 2021, a competent court of law that made a determination that:-

“...I am satisfied Land Reference No. Lietego Settlement Scheme/82 was sub-divided by James Ongera Otieri during his lifetime the certificate of search annexed by the Applicant dated 9/4/2021 is a confirmation Land Parcel No. Lietego Settlement Scheme/82 was sub-divided in 2008.....”

3. I have not been told that this determination was ever appealed against and if so, that the said Appeal was successful. It therefore stands and must be honoured by this court. The suit land was sub-divided and transferred during the life-time of James Ongera Otieri and the parties and/or the Land Registrar would not be guilty of intermeddling by making any adjustments to the boundary or for any other action.
4. Having said so, I have come across the letter dated 5/6/2023 from the County Land Registrar, Nyamira. The same is part of the bundle of documents by the 1st Defendant in her list dated 9/10/2024. It is addressed to Grace Kwamboka Mbuya and Wesley Otieri, the respective Plaintiffs in this case. The Land Registrar says that;

“....the measurements shown on the field diagram in the mutation used to create the parcels in question are inaccurate.....It would be inappropriate to use such a mutation to resolve the boundary dispute between the owners of parcel numbers Lietego Settlement Scheme/404 & 405 the original parcel number Lietego Settlement Scheme/82 should be subjected to a fresh proper sub-division to enable the parties to establish respective boundaries in the current positions.....”

5. This being the position, I order that the Land Registrar, Nyamira and his counterpart in the Survey docket to visit the Locus in Quo in the presence of all the owners of the affected parcels of land viz; LR. Lietego Settlement Scheme/404 & 405 with a view limited only to rectifying the boundaries of the said parcels.

Costs in the cause.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 13TH DAY OF NOVEMBER, 2024.

MUGO KAMAU

JUDGE

In the Presence of: -



Court Assistant: Brenda

Plaintiffs' Counsel: Mr. Wainaina

Defendants' Counsel: Mr. Ataka for 1st Defendant

Mr. Nyongesa for the 2nd, 3rd and 4th Defendants

