



**Mungiria & 10 others v Mutuma & 3 others (Environment & Land Case 12 of 2010) [2024] KEELC 14183 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 14183 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 12 OF 2010  
CK NZILI, J  
NOVEMBER 13, 2024**

**BETWEEN**

**THOMAS MUNGIRIA ..... 1<sup>ST</sup> PLAINTIFF**

**LICHORO KAIGA & 9 OTHERS & 9 OTHERS & 9 OTHERS ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOSEPH MUTUMA ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND ADJUDICATION OFFICER ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JOHN KATHIARI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application before this court is the one dated 23.9.2024. It is asking to issue orders directing:
  - a. The land registrar Urru Lands Office to cancel the registration of titles for L.R No's. Tigania/Antuamburi/9802, 9803, 9805 and 9841.
  - b. The land registrar Urru Lands Office to avail copies of the green card for L.R No. Tigania/Antuamburi/1157 and 9804 said to be missing.
  - c. The cancellation of all the sub-divisions of L.R No. Tigania/Antuamburi/1157, during the adjudication to 36.77 acres, demarcated initially as per the adjudication record.
  - d. The judgment be amended to correct the description of L.R No. Antuamburi 91797 to read Antuamburi/1769.
2. The application is based on the grounds on its and an affidavit in support sworn on 23.9.2024 by John Kathiari. Briefly, the applicant avers that his counterclaim was allowed by a judgment dated 8.11.2023.



3. Again, the applicant avers that during the pendency of the suit, the 3<sup>rd</sup> defendant in the counterclaim transferred L.R No. Tigania/Antuamburi/9802, 9803, 9805, and 9841, making it impossible for the land registrar to effect the decree by canceling the said registration and to revert the titles to the deceased's name.
4. The applicant avers that the Land Registrar Urru Lands Registry has refused or ignored to supply the decree-holder with a certificate of the official search for L.R No's Antuamburi/1157 and 9804; hence, the registration of the said land parcel is shrouded in mystery.
5. Further, the applicant avers that during the hearing of the suit, the adjudication officer produced an A/R record showing L.R No. Antuamburi/1157 was 36.77 acres during its registration, and it is therefore prudent that the said land reverts to that acreage to enable the decree to be effected. The applicant avers that the judgment has a typing error of L.R No. Tigania/Antuamburi/91767, which should read 1767.
6. The applicant avers that the decree was served upon the land registrar on 21.6.2023, but to date, he has refused to effect the decree as per the annexed affidavit of service attached as J.K. "3". The applicant avers that he has managed to obtain certificates of official search for L.R No. Tigania/Antuamburi/9802, 9803, 9805, and 9841, which land parcels were interfered with by Joseph Mutuma, annexed as J.K. (a) – (d).
7. The doctrine of lis pendens was discussed in Ruth Kinyua vs Patrick Thuita Gichure and another (2015) eKLR. It holds that a plaintiff would be liable in every case to be defeated by the defendant's alienation of the subject property, before the conclusion of the case and would be forced to commence proceedings denovo. In Kairu & another vs Wanyeki & another (Civil application 171 of 2019, (2024) KECA 253 (KLR) (8<sup>th</sup> March 2024 (Judgment), the court cited Rose Wakanyi Karanja & others vs Geoffrey Chege Kirundi and another (2019) eKLR, that lis pendens vests upon the foundation that it would palatably be impossible that any action or suit could be brought to a successful conclusion if alienation pendente lite were permitted to prevail. The court said that expediency demands that neither party to a suit should alienate his interest in the suit property during the pendency of the suit, so as to defeat the rights of the other party, as held in Bellamy vs Sabina I DG & J 566.
8. In this suit, the 1<sup>st</sup> defendant Joseph Mutuma was a party to this suit. The issues raised by the applicant are not new.
9. Copies of official search certificate regarding the subdivisions and transfers of L.R No's. Tigania/Antuamburi/9802, 9803, 9805, 9842, 9798, 9801, 9841 & 9799 to Ruth Kaburo, Joseph Mulwa Mutua and Teresia Rimba Buamba, Joseph Mutuma, were attached to an application dated 25.10.2022. In counterclaim dated 6.9.2022, the applicant had sued Joseph Mutuma as a 1<sup>st</sup> defendant.
10. It is also not in dispute that by an order dated 12.6.2012, alienation of Parcels No's. 1507, 1209, 626, 1716, 1662, 2167, 1452, 1582, and 1767 Antuamburi Adjudication Section were stopped until the suit was heard and determined. The order was served upon the District Land Adjudication and Settlement Officer Tigania, Joseph Mutuma, and the Hon. Attorney General on 21.6.2012 as per an affidavit of service filed on 17.10.2022.
11. In the amended counterclaim dated 28.2.2023, the applicant regarding L.R No's Tigania/Antuamburi/1507, 2167, 1452, 1582, 9802, 9842, 9798, 9804, 9803, 9805, 9801, 1157, 9841, 9799 and 1767, had asked the court to direct the transfer of all the said suit land in the name of Paul Itiame (deceased).
12. By the time the applicant amended his counterclaim, he must have known that title deeds to the parcels of land were already issued. The land registrar was not joined as a party. The report dated 27.4.2023



by the sub-county land adjudication and settlement officer Tigania East was already before the court. DW 2 produced several documents, including a title deed dated 6.6.2017 & 3.10.2019 as D. Exh No. 15 & 16.

13. The applicant, in his written submissions dated 9.6.2023, sought the cancellation of L.R No's Tignaia/Antuamburi/9801, 9802, 9803, 9804, 9805, 9842, 9798, 9841, 9799 and 91767. The central issue in the applicant counterclaim was whether the pleaded suit parcels of land were subject to a customary trust. The court proceeded to hold that they were subject to trust and that the titles be canceled to revert to the name of the late Paul Itiame. The judgment was clear that the district land registrar must enter the name of the deceased as the bona fide owner.
14. The decree issued on 19.3.2024 is in line with the judgment of the court. It would be superfluous to issue prayers numbers 2 & 4 of the notice of motion dated 23.9.2024.
15. If the district land registrar has neglected or declined to effect the decree, the decree-holder is at liberty to follow the law as to contempt of court. As to prayer number 3 of the notice of motion, it is the constitutional right of the applicant to access information held by the state or its organs under Article 35 of *the Constitution* as read together with the Access to Information Acts. The prayer is allowed.
16. Regarding prayer number 5, Sections 99 and 100 of the *Civil Procedure Act* provide for the correction of typing or clerical errors in a judgment. The judgment shall be amended to reflect L.R No. Tigania/Antuamburi/1767 instead of 91767. Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 13<sup>TH</sup> NOVEMBER, 2024.**

**In presence of**

C.A Kananu

Mr. Mwirigi for the 4<sup>th</sup> defendant applicant

Juma for 2<sup>nd</sup> – 3<sup>rd</sup> defendants

**HON. C K NZILI**

**JUDGE**

