



**Nchiru Catholic Church and Parish (Through the Catholic Diocese of Meru Registered Trustees) ((Through The Catholic Diocese of Meru Registered Trustees))
v District Land Adjudication and Settlement Officer Tigania West & another;
Ratanya (Interested Party) (Environment and Land Miscellaneous Application
E039 of 2024) [2024] KEELC 13223 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13223 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E039 OF 2024
CK NZILI, J
NOVEMBER 13, 2024**

BETWEEN

**NCHIRU CATHOLIC CHURCH AND PARISH APPLICANT
(THROUGH THE CATHOLIC DIOCESE OF MERU REGISTERED TRUSTEES)**

AND

**DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER TIGANIA
WEST 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT**

AND

DOMIZIANO M'CHOKERA RATANYA INTERESTED PARTY

RULING

1. The court has been approached through a Miscellaneous application dated 27.9.2024. The applicant seeks the suspension of a hearing fixed for 7.10.2024 by the 1st respondent pursuant to a letter dated 23.9.2024. Further, the court is asked to issue a temporary injunction against the 1st respondents from further hearing, or determining or undertaking of any other activity whatsoever related to parcel L.R No. Nyambene/Uringu 1/1873 otherwise registered as L.R No. Nyambene/Uringu I/1873, until Meru E.L.C. no. 58 of 2019 is heard and determined.
2. The grounds are set out on the face of the application and in a supporting affidavit by R.T Rev. Bishop Salesius Mugambi sworn on 27.9.2024. The applicant avers that following a judgment in Meru E.L.C. No. J.R. No. 33 of 2008 delivered on 14.6.2018; the dispute between Domisiano Ratanya (interested



- party) against the applicant was remitted to the land adjudication officer for hearing and determination, and instead of the interested party then subjecting himself to the 1st respondent for rehearing, he filed Meru E.L.C. No. 58 of 2019.
3. While Meru E.L.C. No. 33 of 2008 was subsisting, the suit land was registered in the name of the applicant on 28.11.2014, though the issue was not raised in the suit. That in Meru E.L.C. No. 58 of 2019, the applicant raised a preliminary objection on res judicata, which was dismissed on 8.7.2020, leading to the Nyeri Court of Appeal No. 27 of 2022 that upheld the ruling of the High Court, by a decision rendered on 17.5.2024.
 4. The applicant avers that following the said ruling, Meru E.L.C. No. 58 of 2019 stands revived, yet the 1st respondent is keen to hear a dispute where the suit land is already registered and while Meru E.L.C. No. 58 of 2019 is pending. The applicant urges the court to find that the 1st respondent has no legal mandate to hear and determine a dispute over titled land, which is also subject to a live case before this court.
 5. The court is further urged to suspend the hearing that was intended for 7.10.2024; otherwise, the applicant will be prejudiced. The applicant has attached copies of the judgment in Meru ELC JR No. 33 of 2008 plaint in Meru E.L.C. No. 58 of 2019, a copy of the official search certificate, a copy of the judgment in Nyeri Court of Appeal No. 27 of 2022, a copy of the ruling or order issued on 5.11.2021, judgment in Nyeri Court of Appeal current status of Meru E.L.C. No. 58 of 2019, letter dated 23.8.2024, response letter dated 2.9.2024 and a letter dated 23.9.2024 as annexures marked LG (01 – 09) respectively.
 6. Though the respondents were served with the notice of motion as directed on 2.10.2024 and an affidavit of service sworn by Zakayo Mutua Mutea filed, no response was filed to oppose the application.
 7. The law is that an application for an injunction can only be issued where there is a substantive suit in place; otherwise, an injunction will be in vain and cannot stand in law. In *Cresta Investments Ltd vs Gulf Africa Bank Ltd and another* (2020) eKLR, the court observed that under Order 40 Civil Procedure Rules, an application for an injunction is predicated on a suit filed by a party seeking the injunction and that without a substantive claim such a plea cannot lie in law or at all and would be in vain.
 8. In *Rono & others vs Kenya Forest Service and 4 others* E.L.C. Misc Application No. E102 of 2024 (2024) KEELC 5247 (K.L.R.) (11th July) 2024 (ruling), the court observed that the application for temporary injunction and the orders sought had been mounted on a vacuum since no suit seeking substantive reliefs in the manner envisaged under Section 19 of the *Civil Procedure Act* as read together with Order 3 Rule 1 and Order 40 of the Civil Procedure Rules was in place.
 9. The court observed that the procedure to approach the court has no cure under Article 159 (2) (d) of the *Constitution*, but rather a fundamental and jurisdictional question going to the root of the matter, rendering the suit a nullity. The court cited with approval *Scope Telematics International Sales Ltd vs Stoic Co. Ltd & others* (2017) eKLR, that where there was a straightforward procedure for the redress of any particular grievance prescribed by the *Constitution* or statute, that procedure should strictly be followed.
 10. On whether an injunction could be issued the court cited with approval, *Headmaster Kiembeni Baptist Primary School and another vs Pastor of Kiembeni Baptist Church Mombasa H.C.A. No. 103 of 2004*, that when dealing with interlocutory applications, it would be wrong to grant a permanent injunction,



whose effect is to conclusively decide the suit on issues of fact that should be decided after hearing evidence.

11. In this application, the applicant has raised two fundamental issues: the suit land being subject to a pending case at Meru E.L.C. No. 58 of 2019, which had stalled after an appeal arising from a ruling on whether the suit was res judicata due to Meru ELC JR No. 33 of 2008 and secondly, whether the 1st respondent can hear a dispute under the Adjudication Act (Cap 284) on land falling under the [Land Registration Act](#).
12. Jurisdiction is everything, and without it, a court of law must down its tools. See Motor vessel Lillian “s” vs. Caltex oil (K) Ltd (1989) eKLR. Parties herein have not disputed that following the dismissal of the appeal in Nyeri Court of Appeal the suit before this court whose status is shown in the Case Tracking System platform should proceed to its logical conclusion. The said suit regards issues on whether there was fraud or illegality in registering the suit land in favor of the appellant while there was a pending judicial review matter.
13. The jurisdiction of this court to hear the pending suit was confirmed by the Court of Appeal in its judgment dated 17.5.2024. It would, therefore, be an abuse of the court process to take the issue to the land adjudication officer when the matter is live before this court. A land adjudication officer has no power to hear and determine matters regarding fraud or illegality on the registration of title to land.
14. A land adjudication officer has no powers to set aside, review, or sit on appeal on court orders under Sections 9 – 12 and 26 of the [Land Adjudication Act](#). In Lithara vs Land Adjudication Officer Tigania Central; M’Abiru (2024) KEELC 1775 (K.L.R.) (20th March 2024) (Judgment), the court held that the 1st respondent had overstepped its mandate and usurped powers under the [Land Registration Act](#), which belonged to the land registrar and the court under Sections 26 and 80 thereof. The court held that a public officer can only exercise a power donated to him by a statute and not otherwise. The court further held that the 1st respondent had no powers to hear and determine disputes on actions and proceedings concerning land falling under the [Land Registration Act](#). In the application, the 1st respondent has not denied that there is a court order from the Court of Appeal for the suit to proceed and for the issues of alleged fraud or illegality in the registration of title to the land in favor of the applicant, to be heard on merits.
15. To the extent that the court has been asked to determine the illegality in subjecting the applicant to a nullity, I find that the letter dated 23.9.2024 has no foundation in law under the circumstances. The court finds that it has no jurisdiction to grant prayer number (3).
16. The upshot is that the application dated 27.9.2024 is dismissed with no order as to costs for lack of jurisdiction. The applicant is at liberty to proceed with Meru E.L.C. No. 58 of 2019 to its logical conclusion as directed by the Court of Appeal.

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

In presence of

C.A Kananu

Mwendwa for exparte applicant

Juma for the respondent

Ndubi for the intended interested party.

Intended interested party



HON. C K NZILI
JUDGE

