Kyule v Mutuku; Director Land Adjudication and Settlement Scheme (Third party) (Environment and Land Miscellaneous Application E007 of 2024) [2025] KEELC 597 (KLR) (12 February 2025) (Ruling)

Neutral citation: [2025] KEELC 597 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E007 OF 2024

TW MURIGI, J

FEBRUARY 12, 2025

BETWEEN

JOSEPH MUSILI KYULE ..... APPLICANT

AND

CATHERINE MUTINDI MUTUKU ..... RESPONDENT

AND

DIRECTOR LAND ADJUDICATION AND SETTLEMENT SCHEME .... THIRD PARTY

RULING

1. Before me for determination is the Notice of Motion dated 2nd July, 2024 brought under Article 159 of *the Constitution* of Kenya 2010, Sections 18 and 3A of the *Civil Procedure Act* in addition to Order 50 of the Civil Procedure Rules in which the Applicant seeks the following orders:-

    1. That this Honourable Court be pleased to order the transfer of MELC No. E021 of 2022:- Catherine Mutindi Mutuku vs Joseph Musili Kyule & another from the Principal Magistrates Court Makindu to the Environment and Land Court Makueni for hearing and determination.

    2. That the costs of this application be provided.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Joseph Musili Kyule sworn on even date.

The Applicant's Case

3. The Applicant averred that the Plaintiff instituted Makindu MELC No. E021 of 2022 against him claiming ownership over Plot No. 1279 Kiboko B Settlement Scheme. He deposed that he is the owner

of the suit property having been allocated the same and is in occupation thereof. He further deposed that he had filed a counterclaim seeking cancellation of the title deed issued on 6th June 2024 to the Respondent herein. He contended that the lower court has no jurisdiction to cancel a certificate of title hence the present application. In conclusion, he urged the court to allow the application as prayed.

The Respondent's Case

4. The Respondent filed a replying affidavit sworn 23rd October 2024 in opposition to the application. She averred that she is the registered owner of the suit property. She further averred that the suit in the lower court is based on a tort of trespass and forceful detainer of the suit property by the Applicant. The Respondent contended that the lower court has jurisdiction to cancel a registered title. She further contended that the application herein is misconceived, bad in law and is meant to delay the determination of the main suit. In conclusion, the Respondent urged the court to dismiss the application with costs.

5. The parties were directed to canvass the application by way of written submissions.

6. The Applicant opted to rely on the contents of the affidavit in support of the application.

7. The Respondent filed her submissions dated 19th November 2024 which I have duly considered.

Analysis And Determination

8. Having considered the application, the respective affidavits and the submissions by the Respondent, the only issue that arises for determination is whether Makindu MELC E021 of 2022 should be withdrawn from the lower court and transferred to this court for hearing and determination.

9. The power to transfer suits is governed by Section 18 of the *Civil Procedure Act* which provides that:

    1. On the application of any of the parties and after notice to the parties and after hearing each of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage –

        a. transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

        b. withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter –

            i. try or dispose of the same; or

            ii. transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

            iii. retransfer the same for trial or disposal to the court from which it was withdrawn.

    2. where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

10. The Applicant is seeking to have the suit transferred to this court on the grounds that the lower court lacks jurisdiction to cancel the title issued to the Respondent herein. The Respondent on the other hand argued that the application is an abuse of the court process as the lower court has jurisdiction to cancel title deeds.

11. It is trite law that jurisdiction is everything and without it the court cannot take one more step.

12. Section 9 of the Magistrates Court Act provides as follows

A Magistrate's court shall-

a. in exercise of the jurisdiction conferred upon it by section of the *Environment and Land Court Act* and subject to pecuniary limits under section 7(10 hear claims relating to-

i. environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuation, mining, minerals and other resources;

ii. Compulsory acquisition to land;

iii. land administration and management;

iv. public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land; and

v. environment and land generally.

13. Section 26 of the Environment and *Land Act* provides that:-

3. The Chief Justice may by notice in the Gazette appoint certain magistrates to preside over cases involving environment and land matters of any area of the county.

4. Subject to Article 169(2) of *the Constitution*, the magistrate appointed under sub-section (3) shall have jurisdiction and power to handle-

a. disputes relating to offences defined in any Act of Parliament dealing with environment and land; and

b. Matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrate's Court Act

14. Section 80 of the *Land Registration Act* gives the court power to order for rectification of the register. Section 80(1) provides as follows: -

> Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

15. From the foregoing it is clear that a magistrate duly gazetted under Section 26(3) of the *Environment and Land Court Act* has power to direct the cancellation of a title.

16. The upshot of the foregoing is that the application dated 2nd July 2024 is devoid of merit and the same is hereby dismissed with costs.

.....

HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12TH DAY OF FEBRUARY, 2025.

In The Presence Of:

Absence of the parties

Court Assistant:- Ahmed