



Kiriama v Ogwagwa (Sued as the personal representative/administrator of the Estate of John Ogwagwa) & 7 others (Environmental and Land Originating Summons E004 of 2024) [2024] KEELC 14088 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14088 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA

ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2024

JM KAMAU, J

DECEMBER 18, 2024

**IN THE MATTER OF THE LAW OF SUCCESSION ACT (CAP 160) LAWS OF KENYA
IN THE MATTER OF THE ESTATE OF JOHN OGWAGWA NYAKWEBA(DECEASED) AND
IN THE MATTER OF LAND PARCEL NO.WEST MUGIRANGO/SIAMANI/2020**

BETWEEN

STANLEY OCHENGO KIRIAMA APPLICANT

AND

NYAKERARIO OGWAGWA (SUED AS THE PERSONAL REPRESENTATIVE/ADMINISTRATOR OF THE ESTATE OF JOHN OGWAGWA) 1ST RESPONDENT
ERICK OMayio ONGUBO 2ND RESPONDENT
DICKSON ONGERA ANGWENYI 3RD RESPONDENT
RUTH ONCHIRI 4TH RESPONDENT
OMETE NYARIKI ANGUS 5TH RESPONDENT
PONTIANUS OREKO MAKORI 6TH RESPONDENT
CHRISTINE MORAA OGETO 7TH RESPONDENT
THE LAND REGISTRAR, NYAMIRA 8TH RESPONDENT

RULING

1. Prior to the filing of this suit by way of an Originating Summons in this case on 6/6/2024, the Applicant sought for leave for extension of time on grounds that he was time barred and he explained



the reasons for having brought the suit to Court belatedly. The Court granted the same leave on 5/6/2024 vide Nyamira ELC Miscellaneous Civil Application Number E007 of 2024. When giving the said orders of leave the Court directed that the Respondents would be at liberty to apply for the setting aside of the same should it turn out that the said orders were unmerited. The suit filed on 6/6/2024. In the suit, the Applicant prays for Judgment against the Respondents for the determination of the following questions:-

1. Whether John Ogwagwa Nyakweba (deceased) was the registered owner of the 1.210 Hectares piece of land comprised in L.R. NO. WEST MUGIRANGO/SIAMANI/2020 which he had sub-divided into L.R. NO. WEST MUGIRANGO/SIAMANI/3856, 3857 and 3858 respectively prior to his death.
 2. Whether the Applicant had purchased the portion 50 x 100 feet out of L.R. NO.WEST MUGIRANGO/SIAMANI/2020 from the Deceased registered on the 9/10/1988 prior to its sub-division into the aforesaid sub-divisions.
 3. Whether the Respondents colluded and unlawfully and irregularly sub-divided L.R. NO.WEST MUGIRANGO/SIAMANI/3856 all registered in the name of the Deceased without undertaking succession proceedings.
 4. Whether the actions of the 1st Respondent in connivance with the other Respondents, by reason of the illegal, irregular and unprocedural subdivisions and transfer the Title comprised in LR NO.WEST MUGIRANGO/SIAMANI/3856 (Now Resultant titles upon numerous subdivisions being L.R NO.WEST MUGIRANGO/SIAMANI/5376, 7515, 7514, 6719, 7915, 9475 & 9476), having denied the Applicant his rightful share of that portion measuring 50ft by 100ft in the said parcel of land.
 5. Whether the titles resultant from the illegal subdivision and closure of L.R. NO.WEST MUGIRANGO/SIAMANI/3856 namely L.R NO.WEST MUGIRANGO/SIAMANI/5376, 7515, 7514, 6719, 7915, 9475 & 9476 and any other prior or subsequent titles thereto should be declared null and void and be therefore cancelled and the parcel restored to it is former position as an undivided whole.
 6. Whether an order should issue directing the 1st Respondent to excise and hive off and transfer that portion measuring 50ft by 100ft and comprised in L.R NO.WEST MUGIRANGO/SIAMANI/3856 (Now Resultant titles upon numerous subdivisions being LR NO.WEST MUGIRANGO/SIAMANI/5376, 7515, 7514, 6719, 7915, 9475 & 9476) to the Applicant and whether in the event she fails, the Deporte Registrar of this Honourable court should be empowered to execute the said subdivisions and transfer instruments.
 7. Whether the Respondents should bear the costs of this suit.
2. The upshot of the above is mainly to declare the resultant Titles illegal thereby denying the Applicant his rightful share of the 50 x 100 feet in the said parcel of land and to have the same cancelled and the same restored to the former position as an undivided whole and to have the 50 x 100feet comprised in WEST MUGIRANGO/SIAMANI/3856 transferred to the Applicant. On 14/11/2023 the 4th, 6th and 7th Respondents filed an Application dated 13/11/2024 seeking the Court's order to set aside the order of leave vide Miscellaneous Civil Application No.E007 of 2024 to file this suit out of time and accordingly strike the suit with costs. The grounds advanced that the orders granted to extend time to file the suit out of time was without merit, that the delay of 40 years was inordinate, inexcusable, unjustified against public policy, morality and rule of law. And that the same offends mandatory provisions of the law. In the Supporting Affidavit of one Pontianus Oreko Makori the 6th



Respondent with authority from the 4th and 7th Co-Respondents the Respondents urge the Court that the Applicant's claim offends statute and in particular the Law of Contract of the [Land Control Act, Limitation of Actions Act, the Constitution](#) of Kenya, 2010, fairness and equity.

3. The Respondents also argue that the subject matter ceased to exist and that this is a Succession Cause. And finally that the Application for leave to file suit out of time did not meet the legal threshold.
4. The Applicant opposed the said Application by filing the Grounds of Opposition dated 19/11/2024 in which he argued that the Application is fatally and incurably defective, scandalous, vexatious, frivolous and a total sham and otherwise an abuse of the Court process besides offending the provisions of Order 2 Order 51 of the [Civil Procedure Act](#). I allowed the parties to argue the Application in Court after which I retired to write my Ruling.
5. The issues raised by the 4th, 6th – 7th Respondents went beyond a mere Application as if they were giving evidence for the case. The court is of the opinion that whether it was right to grant the extension orders or not can only be determined when all the parties have tendered their evidence in court at the main Hearing. The said Application is therefore disallowed. Costs in the cause.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 18TH DAY OF DECEMBER, 2024.

MUGO KAMAU

JUDGE

In the Presence of:* -

Court Assistant: Brenda

Applicant's Counsel: Mr. Mwita

Respondents' Counsel: Mr. Aminga h/b for Mr. Nyariki for the 4th, 6th and 7th Respondents.

Mr. Nyamwange for the 2nd Respondent.

