



**Jairo & 2 others v Orina (Environment and Land Appeal E002 of 2024)
[2024] KEELC 14087 (KLR) (11 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 14087 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E002 OF 2024**

JM KAMAU, J

DECEMBER 11, 2024

BETWEEN

EBISIBA NYABOKE JAIRO 1ST APPELLANT

THE COUNTY LAND SURVEYOR-NYAMIRA 2ND APPELLANT

THE LAND REGISTRAR-NYAMIRA 3RD APPELLANT

AND

JUSTUS ONGERA ORINA RESPONDENT

(Being an Appeal from the Ruling/Decision of the Principal Magistrate Court at Keroka by the Senior Resident Magistrate Honourable COLLINS OMBIJA delivered on the 22nd day of December 2023 in the Principal Magistrate in the Principal Magistrate's Court ELC No.E007 of 2020.)

JUDGMENT

1. In the Principal Magistrate's Case Keroka Civil Suit No.MCELC E007 of 2020, dated 4/12/2020 and filed in Court the same day the Respondent herein sought for Judgment against the Appellants herein for:-
 - a. An order of permanent injunction restraining the Defendants (Appellants herein) from entering onto, cultivating, tilling, erecting of any structures, planting crops cutting down of trees or crops or in any other manner interfering or dealing with land parcel number Mwangori Settlement Scheme/50.
 - b. Costs of the suit.
 - c. Any other relief the Court would deem fit to grant.



2. He grounded his suit on his being the registered owner of L.R No.Mwongori Settlement Scheme/50 measuring 1.7 Hectares or thereabout against a portion of which the Appellants were laying a claim thereby preventing the Respondent from free and unfettered use of the land and occupation of the said land. All this in spite of several Demands and the Appellants vide their joint Defence dated 28/12/2020 and filed in Court the same day, averring that the 1st Appellant is the registered owner of the bordering land parcel number L.R Mwongori Settlement Scheme/1206 and that none of them had encroached onto the Respondent's parcel number Mwongori Settlement Scheme/50 but that it was him who had encroached onto the 1st Appellant's L.R. NO. Mwongori Settlement Scheme/1206. They argued that after deliberations before the area Deputy County Commissioner it emerged the issue was a boundary dispute and the said Deputy County Commissioner advised the parties to refer the dispute to the County Land Registrar to fix the same. Accordingly, all the averments in the Plaint save the description of the parties were all denied. An Application for execution is shown on page 19 of the Record of Appeal. The same was filed in Court on 30/3/2022 and a Decree and a Notice to show Cause why execution should not issue. Then there is an Application under certificate of urgency dated 22/5/2023 by the Appellants seeking that the Court be pleased to review and vary the order made on 7/6/2022 and for extension of the warrant of arrest issued by the Court against the Respondent herein. A Bill of costs was filed and taxed. The Appellants objected to the instruction fee of Kshs. 41,000/= and Item No. 14 of the Bill of costs. The said Application was dismissed on 20/12/2023. As a correspondence thereof, the Appellants filed this Appeal and asked for orders that:
 - a. The Appeal be allowed.
 - b. The Ruling of the Senior Resident Magistrate be set aside and that a different Court do assess the costs.
3. The Grounds upon which the Appeal dated 2/2/2024 are that:
 1. The Honourable Magistrate erred in law and fact in relying on extraneous issues visa vis filing a fresh Bill of costs without a specific order and therefore arrived at a wrong conclusion.
 2. The Honourable Magistrate erred in law and fact by closing the file before satisfaction of the certificate of costs issued by the very court.
 3. The Honourable Magistrate erred in law and fact by failing to consider the certificate of costs issued by the very Court had not been reviewed nor appealed against.
 4. The Honourable Magistrate erred in law and fact by failing to consider and evaluate the facts deponed in the Supporting Affidavit which were legally uncontroversial and therefore arrived at a wrong conclusion.
4. I have gone through the pleadings herein and the entire proceedings and I find that the right thing to do was to file a Reference from the Ruling on the Bill of costs but not appeal.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 11TH DAY OF DECEMBER, 2024.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Brenda

Applicant's Counsel: Mr. Ogari



Respondent's Counsel: N/A

