



Murigi & another v Kokayia-Murigi (Environment and Land Miscellaneous Application E016 of 2020) [2023] KEELC 176 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEELC 176 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E016 OF 2020
MN GICHERU, J
JANUARY 26, 2023

BETWEEN

JUDY NJERI MURIGI 1ST APPELLANT

JANICE NJERI MURIGI 2ND APPELLANT

AND

SUSAN WANJIRU KOKAYIA-MURIGI RESPONDENT

RULING

1. This ruling is on the appeal dated November 9, 2020. In the memorandum of appeal the appellants seek the following orders.
 - i. That the order of the trial magistrate issued on October 28, 2020 dismissing the application dated July 7, 2020 be set aside.
 - ii. Any precipitate transactions by the respondent be stayed until the hearing of this appeal.
 - iii. This court order that the appellant in ELC No 26 of 2020 Ngong Magistrates' court proceeds to full hearing on merit.
 - iv. The respondent to bear the costs of this appeal.
2. The application is supported by an affidavit sworn by the first appellant Judy Njeri Murigi who deposes that after the court dismissed their application dated July 7, 2020, the respondent proceeded to subdivide the suit property LR Kajiado/Ole Kasasi/1969 with a view to selling the resultant subdivisions.

This is prejudicial to appellants as they claim the suit land which is their father's property and which the respondent holds in trust for them.



3. The appeal is opposed by the respondent Susan Wanjiru Murigi who has sworn a replying affidavit dated February 17, 2021 in which she deposes that there is a difference between the notice of motion and the appeal. Secondly, the appeal is against the dismissal order which is a negative order.
4. Counsel for the parties were to file written submissions by December 5, 2020. This did not happen. I am therefore writing this ruling without the benefit of the submissions by learned counsel.
5. Having carefully considered the appeal, I find that it has merit and I allow it for the following reasons.
6. Firstly, I understand the appellants to be saying that the suit in the lower court has not been heard on merit, yet the respondent in the process of sub-dividing the suit land which is Kajiado/Ole Kasasi/1969.
7. Secondly, if this is the case, then the suit land will have been disposed off before the appellants rights over the suit property, if any, have been ascertained. This is neither fair nor just because the appellants have a right to a fair hearing under article 50(1) of the Constitution. Before that hearing has taken place, the respondent is said to be subdividing the suit land.
8. The trial magistrate erred in failing to order that the status quo be maintained to forestall the alienation of the subject matter.
9. For the above stated reasons, I allow the appeal in the following terms.
 - i. The orders issued by the lower court on 218/10/2020 are hereby set aside.
 - ii. Status quo to be maintained, that is to say LR No Kajiado/Ole Kasasi/1969 not to be subdivided or transferred until the lower court suit is heard and determined.
 - iii. Costs of this appeal to await the outcome of the lower court suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF JANUARY, 2023.

M N GICHERU

JUDGE

