



**Kiyogi & another (Being legal representative of the estate of Jerevasio Mitambo – Deceased) v M’Murithi & another (Environment & Land Case 40 of 2019) [2023] KEELC 368 (KLR) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 368 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 40 OF 2019  
CK NZILI, J  
JANUARY 25, 2023**

**BETWEEN**

**DENNIS KIYOGI ..... 1<sup>ST</sup> PLAINTIFF**

**MUGAMBI MITAMBO ..... 2<sup>ND</sup> PLAINTIFF**

**BEING LEGAL REPRESENTATIVE OF THE ESTATE OF JEREVASIO  
MITAMBO – DECEASED**

**AND**

**PAUL MUTWIRI M’MURITHI ..... 1<sup>ST</sup> DEFENDANT**

**TITUS MBAYA MUTWIRI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application before the court is dated July 26, 2022 in which the court is asked to issue a temporary injunction restraining the respondents together with the intended defendants from selling, transferring or in any way whatsoever, interfering with LR No Nkuene/Taita/3537 & 3538 until the hearing and determination of this suit.
2. The 2<sup>nd</sup> prayer is for the court to revive the application dated November 4, 2019 and for leave to amend the originating summons to include Lawrence Mwenda, Haron Muchai & Progressive Credit Ltd as respondents. The application is supported by an affidavit of Dennis Kijogi sworn on July 26, 2022. The grounds are that the initial plaintiff sought for and obtained inhibition orders over LR No’s 1198, 1199, 1200, 1201, 1202 and 1203 but the initial owners hurriedly made subdivisions over LR No 1195 into 3537 and 3538 hence the inhibition order became inoperative. That he filed an application dated November 4, 2019 but he died before it was heard. That parcel No 3537 was charged to defeat the suit which due to loan defaults by the chargor risks auction. That since the application abated it should



be revived and the subject parcels preserved. The applicant has attached copies of official searches as annexures DK 3 (a) & (b) respectively.

3. The application is opposed by the initial respondents through an affidavit of Paul Mutwiri M’Murithi sworn on September 27, 2022 for being *res judicata*, given the ruling on similar issues dated October 13, 2021. That no previous orders are in existence as alleged; the alleged transfers were done in 2018 as per an official search attached as PMM “2”; it is bad in law since extension of time has not been sought; it is a delaying tactic; no sufficient cause has been shown for the revival; the applicant has been indolent; orders cannot issue against non-parties to the suit; the intended parties were not privy to the sale agreement and lastly, the application is fatally defective.
4. By a further affidavit sworn on October 25, 2022, the applicant has attached the draft intended originating summons. The applicant further states that orders had been issued on July 30, 2019 and served upon the land registrar Meru but the suit properties were transferred to the proposed defendants with the 4<sup>th</sup> defendant merging the parcel alongside the proposed 5<sup>th</sup> defendant. Therefore, the applicant states that the intended amendments will capture the subdivisions which the proposed defendants have an interest in.
5. Through a ruling delivered on October 13, 2021, the court issued temporary orders of injunction barring and restraining the defendants from occupying or utilizing LR No’s Nkuene/Taita/1198, 1199, 1200, 1201, 1202 and 1203. The court also stayed Nkubu PM ELC No 20 of 2019 and ordered that the *status quo* as at July 29, 2019 be preserved. Thereafter, parties complied with order 11 of the [Civil Procedure Rules](#) and the matter proceeded on May 9, 2022 with 5 witnesses testifying. A further hearing date was given for October 5, 2022 but could not proceed due to the instant application.
6. At page 8 of the ruling the court alluded to the application dated November 4, 2019. The court made a finding that the application was filed without amending the originating summons to reflect the new parcels of land. The ruling covered all the pending applications and the preliminary objection. This was the reason the court granted orders of *status quo* as at July 29, 2019 in order to preserve the subject parcels of land. Therefore, there is no pending application dated November 4, 2019 which this court can revive.
7. Coming to the prayer for amendment, a party is at liberty to join more defendants to a suit through an amendment at any stage of the proceedings against whom any right or relief in respect or arising out of the same act or transaction, where if separate suits were to be brought against such person, any common question of law or fact would arise.
8. In this application, the applicant has attached an official search for LR No’s 3537 and 3538 which are in the names of the proposed 3<sup>rd</sup> and 4<sup>th</sup> defendants and is charged to the proposed 5<sup>th</sup> defendant. To my mind these are necessary parties to the suit. The amendments in terms of the draft amended originating summons are also necessary for this court to effectually and conclusively determine all the issues.
9. As regards prayer 2, the same is premature given the proposed parties are yet to be joined by way of amendments. Further, the previous orders were still in existence and binding as at July 29, 2019. It has not been demonstrated that the subdivisions were done after July 29, 2019.
10. Consequently, the application succeeds in terms of prayer number 5. The amended originating summons to be filed and served within 14 days from the date hereof.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 25<sup>TH</sup> DAY OF JANUARY, 2023.**



**In presence of:**

C/A: Kananu

Mr. Kiogora for defendant

Mr. Miriti for plaintiff

**HON. C.K. NZILI**

**ELC JUDGE**

