



**Takeya v Mpusia & 3 others (Environment & Land Case  
47 of 2017) [2023] KEELC 728 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 728 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 47 OF 2017  
MN GICHERU, J  
FEBRUARY 16, 2023**

**BETWEEN**

**STEPHEN LESIYA KAKEYA ..... PLAINTIFF**

**AND**

**GEORGE KANTAI MPUSIA ..... 1<sup>ST</sup> DEFENDANT**

**MOISARI MBUSIA MUNTET ..... 2<sup>ND</sup> DEFENDANT**

**SHINA MOISASI CATHERINE ..... 3<sup>RD</sup> DEFENDANT**

**JOSEPHINE SASIMUA (SUED AS THE ADMINISTRATOR OF THE ESTATE OF  
MOISASI OEL MUTENTE - SUYIANKA - DECEASED) ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated August 30, 2022. The motion which is brought under section 1A, 1B, 3A, 63(e) and 94 of the *Civil Procedure Act*, orders 22, rules 9, 26, 48, 55, 56 and 68 and 40, rule 1(b) of the *Civil Procedure Rules*, seeks two main prayers namely-
  - i. Attachment of LR Kajiado/Kaputiei-North/812 by prohibiting the defendants either by themselves and anybody claiming through them from transferring, charging, alienating, gifting, disposing, subdividing pending the ascertaining of the costs.
  - ii. Sale of LR Kajiado/Kaputiei-North 812 by public auction in satisfaction of the decree herein.
2. The application is supported by an affidavit sworn by the plaintiff dated August 30,2022 which has five annexures. There are also 12 grounds. The gist of the above material is that the plaintiff is the decree holder in this suit and the defendants have been given ample time to satisfy the decree and failed to do so.



The only asset that they have that can fully satisfy the decree is this parcel and there is credible information that they intend to alienate it to defeat the execution of the decree and for the plaintiff to enjoy the fruits of his judgment.

One of the annexures to the plaintiff's affidavit is a copy of certificate of official search which shows that the parcel is in the name of Moisasi Ole Mutente Suyianka who was a party to the suit.

3. The motion is opposed by the defendant and George Kantai Mpasai has sworn a replying affidavit dated September 27, 2022. In the affidavit it is deposed as follows.

1. Firstly, LR 812 has been subdivided and devolved to third parties who are not parties in this suit.
2. Secondly, the High Court has already distributed LR 812 and this court has no jurisdiction in the matter.

Counsel for the parties were to file written submissions by January 15, 2023 but by the time I am writing this ruling in early February 2023, no such submissions have been filed.

4. I have carefully considered the notice of motion dated August 30, 2022 and I find that LR No Kajiado/Kaputiei-North/812 should not be dealt with before execution of the decree herein for the following reasons.

1. Firstly, LR 812 is in the name of Moisasi Ole Mutente Suyianka who is a party in this suit through Josephine Sasimua Moisasi. This is according to a copy of certificate of official search dated July 5, 2022. There is no other person appearing as the registered owner of the land.
2. Secondly, this court has power to execute its decrees under order 22 of the Civil Procedure Rules. The court has power under section 3A to prevent abuse of its process. Process of the court includes the execution of its orders and decrees.
3. Thirdly, any third parties affected by the orders of the court adversely have various ways in which they can approach the court. No such third party has approached the court to say that they have been affected by the orders issued so far.
4. Finally, the plaintiff has a decree of Kshs 38 Million against the defendants and they have not proved that they have any other property that they can offer as a security for the due performance of the decree in case their appeal is unsuccessful. They already have an order of stay of execution in their favour. They should not therefore be allowed to deal with this land before their appeal is heard and determined.

5. For the above stated reasons, I hereby issue an order restricting any dealings with LR Kajiado/Kaputiei-North/812 until the appeal pending against the judgment and decree herein is heard and determined.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**M N GICHERU**

**JUDGE**

