



**M'Mbwi (Legal representative of Ikunyua Mbui alias M'Ikunyua M'Mbwi)  
v Land Adjudication Officer Meru Central & 3 others (Miscellaneous  
Application 43 of 2019) [2023] KEELC 866 (KLR) (15 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 866 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
MISCELLANEOUS APPLICATION 43 OF 2019  
CK NZILI, J  
FEBRUARY 15, 2023**

**BETWEEN**

**M'MBIJIWE M'MBWI (LEGAL REPRESENTATIVE OF IKUNYUA MBUI ALIAS  
M'IKUNYUA M'MBWI) ..... APPLICANT**

**AND**

**LAND ADJUDICATION OFFICER MERU CENTRAL ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR MERU CENTRAL ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**MUITA THIRIKWA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. By an application dated October 19, 2022 the court is asked by the 4<sup>th</sup> respondent Muita Thirikwa to issue an eviction order against the respondent who was the applicant in the main suit from the applicants' Parcel No. LR Ntima/Igoki/892, the county surveyor to re-establish the boundaries which have been interfered with; the land registrar to be ordered to produce all documents relating to the suit land to facilitate the process and the OCS Meru Police Station to provide security during the process. The court is also asked to grant leave for Kevin Nyenyire advocates to come on record.
2. The grounds upon which the application is made are contained on its face and the supporting affidavit of Muita Thirikwa sworn on the even date. It is the applicant's contention that he is the lawful owner of the subject land after the judgment was delivered in his favour but the respondent and his family members have continued to forcefully occupy the land without his permission and instead continue unperturbed to erect new buildings.



3. Further, the applicant averred that despite reports made to the OCS and DCI Meru he has been told to obtain a court order for eviction.
4. The applicant has attached a copy of the judgment dated October 22, 2010, copy of the title deed, decree dated January 18, 2011 and a warrant to give vacant possession dated March 4, 2011 in High Court Meru CC 161 of 1991.
5. The application is opposed by M'Mbijiwe M'Mbwi through a replying affidavit sworn on December 5, 2022 in which he admits the judgment in Meru HCC No 160 of 1991 and in this matter in favour of the applicant but says that they did not meet the ends of justice or fairness to himself and his family.
6. The respondent admitted that his family lives on the suit land which his deceased brother held in trust for the entire family which he leased part of it, to the 4<sup>th</sup> respondent hence rendering them homeless.
7. It was averred that in 2011, the 4<sup>th</sup> respondent/applicant demolished all their houses without any notice. That the transactions between his late brother and the applicant were not sanctioned by his family since the land was ancestral in nature. That due to legal ignorance and lack of fund she failed to appeal against the two judgments, but urged the court to set aside the same or grant him leave to appeal against them out of time for ends of justice and fairness to be met. That unless the application is allowed, he stands to suffer prejudice and be rendered homeless otherwise his family should not suffer for mistakes of his elder brother which are against Kimeru customs and law.
8. By a judgment dated February 26, 2020, the court dismissed the respondents suit and made an order that this judgment be placed in Meru HCC No 160 of 1991 and the judgment in that suit be placed in this file.
9. What the applicant was questioning was the transfer from the record of existing rights (AR) to read the name of the applicant Muita Thirikwa instead of M'Ikiugu M'Imbwi the respondent herein over LR No Ntima/Igoki/892; the legality of the title deed and for a request to cancel and rectify the same in favour of the respondent. The application was opposed by the 1<sup>st</sup>-4<sup>th</sup> respondents on account of *res judicata* due to HCC Meru CC 160 of 1991. It appears the 4<sup>th</sup> respondent came on record through the notice dated January 15, 2020 filed by Kevin Nyenyire and Co Advocates but filed no replying affidavit, though he had hitherto participated in the hearing by cross examining the applicants' witnesses and testifying as DW 1 and DW 2.
10. By a judgment dated February 26, 2020 the court made a finding that the suit was *res judicata* since it was over LR No Ntima/Igoki/892 in which the court had declared Mwitia Thirikwa the 4<sup>th</sup> respondent/applicant herein as the rightful owner in by a judgment delivered on October 22, 2010 and an order of eviction issued thereto. The court dismissed the suit with costs.
11. Having set the background, the court is being asked to grant several prayers. On the 1<sup>st</sup> prayer as at the time the judgment was delivered the applicant herein was duly represented by the law firm now seeking to rejoin the suit. I find the request unmeritorious.
12. On the prayers for eviction, vacant possession, re-establishment of beacons and enforcement thereof by the OCS Meru Police Station, there is no dispute that the applicant never sought for any substantive prayers prior to the judgment dated February 26, 2020. There was no counterclaim in this matter.
13. It was the 1<sup>st</sup>-4<sup>th</sup> respondents to the initial application who raised the plea of *res judicata* and sought for the judgment in Meru HCC No 160 of 1991 to be placed before this court.
14. The applicant has attached a copy of a decree dated January 18, 2011 and a warrant to give vacant possession dated March 4, 2011.



15. The manner in which an execute a decree issued by the court is governed by Order 22 *Civil Procedure Rules*. A decree which is more than a year under Order 22 Rules 18 & 29 *Civil Procedure Rules* requires a notice to show cause to be served upon the judgment debtor.
16. The applicant has a decree in his favour issued in Meru HCC No. 160 of 1991. He ought to proceed with execution in that file. All what the court in delivering the judgment on 26.1.2020 asked to have was a copy of that judgment placed in this file. The two files were never consolidated. Save for costs, there was nothing made in this file in favour of the decree holder.
17. On the issues raised by the respondents, there is no formal request for leave to appear out of time before the court. The court has no jurisdiction to determine issues not properly before it. The less I say about the request, the better.
18. Consequently, I find the application lacking merits.

Orders accordingly. The same is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2023**

**In presence of:**

C/A: Kananu

Nyenyire for applicant

Mr Mwenda for Kieti for respondents

**HON C K NZILI**

**ELC JUDGE**

