



**Logoransamari & 599 others v Norman (Environment & Land Case
53 of 2021) [2022] KEELC 15601 (KLR) (6 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 15601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 53 OF 2021**

AK BOR, J

JULY 6, 2022

BETWEEN

ESIBICHO LOGORANSAMARI & 599 OTHERS PLAINTIFF

AND

IRENE ARDA NORMAN DEFENDANT

(FORMERLY NYERI ELC CASE NO. E001 OF 2021)

RULING

1. Through the application dated June 18, 2022 filed in Miscellaneous Application No. E001 of 2022, Harry George Jennings, Susan Sarah Kabali, Molly Louise Jennings, Richard Ronald Jennings and Lucy Wambui Jennings sought to arrest the judgment in this case that was scheduled to be delivered on June 2, 2022 and stay the execution of any orders that may have been issued in this suit. They also sought consolidation of Miscellaneous Application No. E001 with this suit and to be joined to this case as interested parties. They sought orders for the reopening of the case to allow them to file pleadings, cross examine the Plaintiffs and basically be heard in the matter.
2. The application was supported by the affidavit of Harry George Jennings sworn on May 23, 2022 who deponed that he and the other Applicants are the Executors and beneficiaries of the Will of the late Richard Francis Jennings pursuant to the orders issued in Nakuru Succession Cause No. 183 of 1987. They contended that the land in dispute in this case constitutes part of the Estate of the late Richard Francis Jennings and does not belong to the Defendant in this case. Mr. Jennings explained that Irene Ada Norman had been issued a title over land reference number (L.R. No.) 13155/2426 under the Registration of Titles Ordinance and the property was transferred to William Robert Sands on April 14, 1960. Mr. Sands in turn transferred the land to the late Richard Francis Jennings on September 6, 1961. He deponed that the suit land being L.R. No. 2426 and L.R. No. 5197, are adjacent to each other and form part of the Estate of the late Richard Francis Jennings and that both parcels of land are collectively referred to as the Jennings Ranch.



3. He deponed that the Jennings family have been in possession and occupation of the suit land since 1961 and have been paying rates over the years. He averred that pastoralist communities have invaded, encroached and trespassed upon the suit land in an attempt to claim ownership. In this regard, they filed Nanyuki CMC ELC Case No. 47 of 2018 *Kisiriri Community v Harry George Jennings, Lucy Wambui Jennings & 2 Others* seeking a declaration that they were the rightful owners of the suit land; a permanent injunction against the Defendants; compensation for destruction of houses and structures; and general damages. The court in its judgment delivered on August 19, 2020 found that the Plaintiffs did not own the suit land and issued a permanent injunction restraining the community from trespassing or invading the suit land.
4. Being aggrieved with that decision, the Plaintiffs appealed against that decision in Nyeri ELC Appeal No. 8 of 2021 which he stated is yet to be heard and determined. He pointed out that the Plaintiffs were not granted orders for stay of execution in that case. He contended that this suit is a reincarnation of CM ELC Case No. 47 of 2018 and Nyeri ELC Appeal No. 8 of 2021 and added that the subject matter in these suits is the same except for the fact that the claims are clothed differently. He averred that Irene Ada Norman transferred the suit land to the late Richard Francis Jennings and that no interest can accrue to any person claiming the land through her.
5. Mr. Jennings averred that the Plaintiffs in this case illegally entered and have remained in the Jennings ranch illegally and that they have continued to violate Jennings' right to use and enjoy its private property.
6. The 1st Plaintiff, Esibicho Logoran Nsamari swore the replying affidavit opposing the application. He averred that the Applicants are strangers to the Plaintiffs and maintained that their claim in this suit was against Irene Arda Norman for adverse possession of L.R. No. 2426 because they have lived on this land openly, peacefully, continuously and uninterrupted since 1992. He denied that they are trespassers on the suit land. He proffered that should the court grant the orders sought and add the applicants as parties to this suit, then their claim for adverse possession would still stand. Mr. Nsamari maintained that the 1st applicant lacked the authority to plead on behalf of the 2nd to 4th applicants.
7. Parties filed written submissions which the court considered. The Applicants submitted that the Plaintiffs have misled the court with regard to the ownership of the suit property and the person against whom they claim adverse possession. They submitted that they intend to demonstrate that this case is res judicata or sub judice in light of Nyeri ELC Appeal No. 8 of 2021 as well as Nanyuki ELC Case No. 49 of 2021 which touch on the illegal occupation of the Jennings Ranch by pastoralist communities who are abusing the court process and attempting to sanitise the illegal occupation of the ranch.
8. The Respondents submitted that there is no judgment to be arrested or stayed. They relied on the decision in *Geoffrey M. Asanyo & 3 others v Attorney General* [2018] eKLR. They submitted that the Plaintiffs had complied with the court orders regarding effecting substituted service in the newspapers three times. They urged that that service had not been disputed and that the present application has been made late in the day. They maintained that a date should be set for the delivery of the judgment in this case in accordance with order 21 rule 1 of the *Civil Procedure Rules* section 25 of the *Civil Procedure Act*. The Plaintiffs relied on the decisions in *Boniface Kivindyo Mutisya v Alfred Kavila Kivindyo & 2 others* [2018] eKLR and *Innocent G. Ondieki v Julius Nakaya Kabole* [2019] eKLR in support of their arguments.
9. Further, the Plaintiffs submitted that Miscellaneous Application No. E001 of 2022 cannot be consolidated with a substantive suit and added that there is no judgment in this suit capable of being arrested. They submitted that the Applicants cannot be joined to this suit since the matter only awaits



judgment and that no material has been placed before the court to warrant reopening of the parties' cases.

10. The respondents submitted that the parties and prayers sought in Nanyuki CM ELC 47 of 2018 are different from those in this case and that the issue of res judicata does not arise. They urged that the application lacks merit and should be dismissed with costs.
11. The court has considered the application, responses and the submissions filed by the parties. In this case, the plaintiffs sued Irene Arda Norman laying claim to L.R. No. 2426 through adverse possession. The hearing went on without the participation of the Defendant, Ms. Norman, who did not appear despite being served through advertisements in the newspapers. The matter was slated for the delivery of judgment on June 2, 2022 but the instant application was filed on May 18, 2022 before the court delivered the judgment. Looking at the copy of title exhibited to the affidavit of Harry George Jennings in support of the application, the court is satisfied that that land is most likely the subject matter in this case. Whatever orders this court may make with respect to the suit property will definitely affect the Applicants. In the interest of justice, the Applicants deserve to be heard before this court delivers its judgment on whether the plaintiffs have a valid claim for adverse possession of the suit land. The Applicants have demonstrated that they have a stake in these proceedings as the executors and beneficiaries of the Estate of Richard Francis Jennings based on their assertion that the suit property in this case forms part of the assets of that Estate. It may well be that the Plaintiffs sued the wrong defendant and not the real owner of the suit land
12. The Applicants sought to have this suit consolidated with Nanyuki Miscellaneous Application No. E001 of 2022 and to have the orders issued here apply in that case. Once the instant application dated May 18, 2022 is disposed of there will be nothing left for determination in miscellaneous cause. No useful purpose will be served by consolidation of the two suits.
13. This case will be reopened and the applicants in Miscellaneous Application No. E001 of 2022 added as Interested Parties to this suit. The Interested Parties are directed to file and serve their pleadings within 14 days of being served the pleadings and documents which the Plaintiffs filed in this case. The Plaintiffs' witnesses will be recalled for cross examination by the Interested Parties. The costs of the application shall be in the cause.

Delivered virtually at Nanyuki this 6th day of July 2022.

K. BOR

JUDGE

In the presence of: -

Mr. John Abwuor for the Plaintiffs

Ms. Wangechi Wangare for the Applicants

No appearance for the Defendant

Ms. Stella Gakii- Court Assistant

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