



**Kabui v Kabui & another (Environment & Land Case  
799 of 2013) [2023] KEELC 17737 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17737 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE 799 OF 2013  
EC CHERONO, J  
MAY 25, 2023**

**BETWEEN**

**BENINA WAIRIMU KABUI ..... PLAINTIFF**

**AND**

**JOHN KINYUA KABUI ..... 1<sup>ST</sup> DEFENDANT**

**MURIITHI KABUI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a notice of motion application brought under certificate of urgency dated June 6, 2022, the applicant seeks the following orders;
  1. That the honourable court be pleased to allow the applicant herein Peter Mugera Kabui to substitute the deceased plaintiff herein Benina Wairimu Kabui
  2. That the honourable court be pleased to grant leave the firm of M/S.J.Ndana & Co. Advocates to represent the intended plaintiff herein
  3. That the honourable court do order the District land Registrar Kirinyaga to dispense with the production of the title deed No. Mutira/Kaguyu/608 & Mutira/Kaguyu/609, copies of Pin Numbers, photographs Identity cards for the defendant during implementation of the court order herein given on 12<sup>th</sup> day of July 2019.
  4. That this Honourable court do order the Deputy Registrar to sign all the necessary documents to facilitate subdivision and transfer of the said land parcel No. Mutira/Kaguyu/608 & 609 and the resultant numbers thereafter to the respective parties.
  5. That this Honourable court do order the Officer Commanding Officer (OCS) at Kagumo Police Station to provide security during the subdivision of land parcels No. Mutira/Kaguyu/608 & 609.



2. The application is premised on grounds that there is a judgment and decree of this Honourable court delivered on July 12, 2019 in which the plaintiff's claim was allowed and the two parcels of land being L.R No. Mutira/Kakuyu/608 & 609 were ordered to be shared equally amongst the parties herein and their siblings. The plaintiff deposed that despite the clear orders of this Honourable court, the defendants have failed to cooperate in the implementation of the said orders by refusing to sign the mutation forms. The plaintiff has also deposed that the defendants who are registered as proprietors of the suit parcels of land have also refused to surrender the original title deed for the two parcels to the land Registrar for purposes of subdivision and transfer of the resultant portions to the respective beneficiaries. The applicant further deposed that the defendants have threatened to unleash violence in case any surveyor attempts to subdivide the said parcels.
3. In response to the said application, the 2<sup>nd</sup> defendant/respondent filed a replying affidavit in opposition thereto and deposed that the application is frivolous, vexatious and an abuse of the court process and that there is a similar application pending before court dated 9<sup>th</sup> August 2021. The 2<sup>nd</sup> respondent stated that the affidavit in support of the present application is full of falsehoods as no mutation forms have ever been presented to them for signature and that they have never threatened to unleash violence of any kind at any given time to anyone. The 2<sup>nd</sup> respondent further stated that the grant of letters of administration Ad litem issued to the applicant on June 2, 2022 was secretly, fraudulently and without full disclosure obtained by the applicant through misrepresentation of facts

### **Analysis and Determination**

4. I have considered the Notice of Motion application dated 6<sup>th</sup> of June 2022, the supporting affidavit of the applicant and the annexures thereto. I have also considered the replying affidavit by the 2<sup>nd</sup> defendant/respondent sworn on June 23, 2022 and the annexures in support thereto as well as the applicable law. It is not in dispute that there is a judgment and decree issued by this Honourable court in favour of the plaintiff/applicant on July 12, 2019. It is not also in contestation that there is no order issued by this Honourable court or any other superior court staying the said judgment/decreed. It is trite that court orders/decrees are not issued in vain but are meant to be implemented and obeyed unless they are set aside. Where a party fails to cooperate in the implementation of a court order, the court upon an application will not shy away from issuing necessary orders and directions to ensure enforcement of its orders/decreed. In this case, the applicant has deposed that the respondents have not only refused to surrender the original title deed to the District Land Registrar but have also refused to sign and provide the requisite statutory documents necessary for enforcement of the said orders.
5. The averments given by the applicant under oath in the supporting affidavit have not been controverted in any way. In view of the matters aforesaid, I find the Notice of Motion application dated June 6, 2022 merited and the same is hereby allowed as prayed. The Costs of the application shall be borne by the respondents.

Orders accordingly.

**READ, DATED AND DELIVERED VIRTUALLY AT BUNGOMA THIS 25<sup>TH</sup> MAY, 2023**

**HON. E.C. CHERONO**

**ELC JUDGE**

**In the presence of;**

1. Mr Ndana for the applicant
2. M/S Kimata for Mr. Ombachi for the Respondent



3. M/S Joy C/A

