



**Muturi v Murua (Environment & Land Case 469 of 2011)
[2023] KEELC 18392 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18392 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 469 OF 2011**

**AA OMOLLO, J
JUNE 29, 2023**

BETWEEN

MARY WAIRIMU MUTURI PLAINTIFF

AND

JOHN WAKIBI MURUA DEFENDANT

RULING

1. For determination is the motion dated March 29, 2023 premised under the provisions of section 1A, 1B and 3A. The Plaintiff/Applicant seeks for orders;

- 1) Spent
- 2) That the Honourable Court be pleased to order that L.R No. 10874/1181 is the 1 acre that has been severed out of L.R No. 10874/51 and which the Defendant is obligated to transfer to the Plaintiff in a satisfaction of judgment of this court delivered on the 28th April, 2017.
- 3) That the Honourable Court be pleased to correct or amend clause 2 of the decree of this court issued on 17th July, 2018 to read: -

“2 That an order of specific performance is hereby issued compelling the Defendant to transfer one (1) acre severed from land parcel No. 10874/1181 Thika Municipality, as shown in the survey map of Thika Municipality dated 23rd April, 2010 and in default the Chief Executive of this Honourable of this Honourable Court is hereby ordered to sign and or execute the documents of transfer of the said land in favour of the plaintiff herein.”

- 4) That upon the transfer of the said land parcel No. 10874/1181 to the plaintiff's number and in any case within 14 days of transfer the plaintiff to deposit in court the balance of the purchase price in the sum of Kshs.200,000.00.



- 5) That the costs of the application be provided for.
2. The application is supported by an affidavit sworn by the applicants and on the grounds inter alia;
 - (a) That the judgment in this case was entered before the Defendant severed one (1) acre out of the bigger L.R No. 10874/51.
 - (b) That as per the judgment of the court, the Defendant is required to transfer the said two acres to the plaintiff.
 - (c) That although the Defendant has subdivided the said land reference into two resultant titles one being for one acre, he has declined to transfer the one acre to the plaintiff.
 - (d) That the Defendant has in utter contempt of the judgment started subdividing the said one acre into 8 different plots with the intention of selling the different portion to other persons.
 - (e) That the Defendant has declined to receive the sum of Kshs. 200,000.00 the balance of the purchase price the court ordered to be paid to the Defendant upon his signing of the transfer documents in favour of the plaintiff.
 3. Vide the affidavit of service dated June 15, 2023 and sworn by Paul Biage Motanya, it is deposed that the Respondent's Counsel was served with this application on April 4, 2023 at 2:15 p.m. There has been no response filed to challenge the orders being sought in the application.
 4. I have also perused the judgment delivered on April 28, 2017 which granted the Plaintiff/Applicant reliefs as sought in paragraphs (i), (ii) and (iii) of the plaint dated May 20, 2010. Paragraph (i) sought a declaration that the plaintiff is the legal and rightful owner of the (1) acre to be severed from Land Parcel No. 10874/51 Thika Municipality. Prayer (ii) was an order for specific performance compelling the Defendant to transfer the one (1) acre to the Plaintiff.
 5. Therefore, the orders sought in the application before me are in execution of the decree. Since the decree has not been set aside or varied, there is no reason for me to deny the plaintiff the fruits of her judgment. Accordingly, the Motion dated March 29, 2023 is allowed as presented.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE, 2023

A. OMOLLO

JUDGE

In the presence of

Masare Nyangau adv. for the Applicant

N/A for Defendant/Respondent

