



**Matumbi & another v Muriuki & another; Equity Bank (Kenya) Limited (Interested Party)
(Environment & Land Case 74 of 2009) [2023] KEELC 18124 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18124 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 74 OF 2009**

**CK YANO, J
JUNE 21, 2023**

BETWEEN

GEORGE MATUMBI 1ST PLAINTIFF

JULIUS MUTHURI 2ND PLAINTIFF

AND

ISAAC MURIUKI 1ST RESPONDENT

STEPHEN THIURI 2ND RESPONDENT

AND

EQUITY BANK (KENYA) LIMITED INTERESTED PARTY

RULING

1. The applicants herein moved this court *vide* an application dated November 11, 2022 brought pursuant to section 1A,1B, 3, 3A, 34 & 63 (e) of the [Civil Procedure Act](#) and order 9 rule 9 & 51 rule 1 of the [Civil Procedure Rules](#) wherein they seek for orders that:
 1. That the application be certified urgent and the same be heard expeditiously
 2. That the firm of M/s Mwirigi Kaburu & Co Advocates be granted leave to come on record for the plaintiffs in the place of M/s Mithega & Kariuki Advocates.
 3. That an order be issued, directing the interested party, Equity Bank (Kenya) Ltd, to issue a discharge of charge for the legal charge registered on October 31, 2014 against LR No Kiirua/Naari/1105.
 4. That the land registrar Meru Central Lands registry be ordered to make an entry into the register of LR No Kiirua/Naari/1105, discharging the legal charge registered on October 31, 2014.



5. That the Land Registrar Meru Central Lands registry, do dispense with the production of the original title deed for LR No Kiirua/Naari/1105 while registering the mutation form.
 6. That costs be in the course.
2. The application is supported by the affidavit of Lilian Kendi Muthuri and is premised on the following grounds-;
- a. That the decree was issued herein on July 10, 2019 after the defendants failed to defend the suit.
 - b. That on September 29, 2020, an order was issued authorizing the Deputy Registrar to execute all documents to implement the decree of July 10, 2019.
 - c. That thereafter the Deputy Registrar executed a Land Control Board application for consent to survey the suit land pursuant to the decree of July 10, 2019 and a consent was issued on June 23, 2022.
 - d. That the Deputy Registrar also executed the mutation form which was presented before the County Surveyor, Meru and was approved on October 4, 2022.
 - e. The plaintiffs' entitlement as per the decree was designated as Number Kiirua/Naari/1105 measuring 1.012 Ha (2.5 acres) in the approved mutation form.
 - f. The approved mutation form cannot be registered in view of the legal charge registered in favour of Equity Bank (Kenya) Ltd on October 31, 2014 and in the absence of the original title deed.
 - g. That the plaintiff are anxious to enjoy the fruits of their judgment of July 10, 2019 hence this application.
3. In her supporting affidavit sworn on November 11, 2022 Lilian Kendi Muthuri avers that she is the legal representative of the estate of Julius Muthuri, the 2nd plaintiff herein and therefore competent to make and swear the affidavit. That she was substituted in place of the 2nd plaintiff *vide* an order made on September 29, 2020 in this matter. The deponent has reiterated the above grounds and annexed copies of the decree, order, application for consent and the resultant consent, mutation form, search certificate and a letter dated October 6, 2022 and avers that the applicants are anxious to enjoy the fruits of their judgment, hence this application.
4. There is an affidavit of service filed on February 6, 2023 showing that the firm of M/s Mithega & Kariuki advocates who was previously representing the applicants was served on November 16, 2022 while Equity Bank (Kenya) Limited, the interested party herein was served on November 24, 2022 but none of them filed a response, hence the application is not opposed. The applicants counsel urged the court to grant the orders sought, arguing that orders of court are not issued in vain and the decree holders should enjoy the fruits of their judgment.
5. I have considered the application. As already stated, the application is not opposed. I have also perused the documents annexed to the affidavit in support of the application and the court record. The issue for determination are whether the orders sought should be granted or not.
6. The firm of M/S Mwirigi Kaburu & Co Advocates have sought for leave to come on record for the plaintiff in the place of M/S Mithega & Kariuki Advocates who previously represented the plaintiffs.



7. It is not in dispute that the said advocates came on record after the delivery of judgment and need to seek leave of court as per the provisions of order 9 rule 9 of the Civil Procedure Rules which provides that:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court -;

Upon an application with notice to all the parties, or upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
8. The provisions of order 9 rule 9 allow the court to grant leave upon an application with notice to all the parties or upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person. Rule 10 allows the said prayer seeking leave to be brought together with other prayers.
9. I have perused the application herein and confirm that the prayer for leave for the firm of M/S Mwirigi Kaburu & Co Advocates has not been contested since the application is unopposed, thus the said firm is granted leave to come on record in terms of prayer 2 of the application herein.
10. On the second issue, there is no response filed despite the application having been served as evidenced by the affidavit of service dated February 2, 2023. The evidence by the applicants is not controverted. Accordingly, the matters contained in the application and the supporting affidavit are not contested.
11. Consequently, the application is allowed in terms of prayer 2, 4 and 5. Each party to bear their own costs.
12. It is so ordered.

DATES SIGNED AND DELIVERED AT MERU THIS 21ST DAY OF JUNE 2023

IN THE PRESENCE OF

Court Assistant – V. Kiragu

Mwirigi Kaburu for plaintiff/applicant

No appearance for defendants

No appearance for interested party/respondent

C.K YANO

JUDGE

