



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO 19 OF 2014

GENESIO MURITHI BORE (legal Rep. of the Estate of

M'BOORE MURANGA – Deceased.....1ST APPELLANT/APPLICANT

FESTUS MWALIMU.....2ND APPELLANT/APPLICANT

мбака MURANGA.....3RD APPELLANT/APPLICANT

VERSUS

GENESIA CIARWIGI MUCHIRI.....RESPONDENT

RULING

1. Before me is an application dated 27/2/2020 which seeks:

- i. Order directing OCS Chuka Police Station to provide security to appellant and surveyor during subdivision of LR. No. KARINGANI/NDAGANI/236
- ii. Order to the Respondent to sign all relevant documents to facilitate subdivision and transfer thereof in respect of the LR. No. KARINGANI/NDAGANI/236, and in default the court to authorize EO to sign the documents.
- iii. Order be served upon OCS, Chuka police station
- iv. Cost of security incurred by appellant be borne by Respondent.

2. The application is premised upon grounds set out in the supporting affidavit and expounded in the submissions.

3. The major argument is that the court in a ruling delivered on 19/2/2020 reviewed its judgment delivered on 30/5/2017. However, the Respondent and her children are obstructing implementation of the judgment as reviewed. The specific acts complained are; (1) they are preventing subdivision of the suit land in execution of the judgment; and (2) the Respondent has refused to sign any transfer documents. It has therefore become necessary to seek for security from OCS and order compelling her to sign documents which failing EO to sign.

4. The Respondent in a replying affidavit denied obstructing implementation of the judgement. Instead she blames the applicants for not cooperating in the subdivision exercise. She claimed that she engaged a surveyor and paid fees but the appellant refused to cooperate. She sought the help of the chief and County commissioner on the matter. She then sought security from these government offices on the exercise. She claims to have applied for Land Control Board Consent but yet to collect the application forms due to COVID-19.

5. According to her, her son has a permanent house on the land which makes it difficult to subdivide the land into 1.15 acres. These issues have delayed the execution of the judgment. The appellant engaged into a confrontation when the surveyor visited until the exercise aborted. She also filed submissions to amplify her stand point.

ANALYSIS AND DETERMINATION

6. Is the application merited? I see accusations and counter accusations flying from one party to the other. Of essence is that there is a judgment that is yet to be implemented. I do not wish to say I believe one party and not the other. I will do what is necessary in execution of the judgement herein. Accordingly: -

i. I direct that the Respondent shall sign all subdivision and relevant transfer documents including application for consent

from the land control board within 7 days which failing the DR shall sign all relevant papers to facilitate subdivision of the suit property and transfer thereof.

ii. I also direct the OCS Chuka Police Station to provide security during the subdivision of the suit land.

iii. The District Land Surveyor shall survey the land within 30 days.

iv. Both parties shall bear the cost of security and survey.

v.

vi. As these parties cannot work in harmony, the applicant shall pay all such costs; but half thereof shall be refunded by the Respondent.

It is so ordered.

Dated and signed at NAROK this 14th day of December, 2020

F. GIKONYO

JUDGE

Dated, signed and delivered at Meru this 16th day of December 2020

T. W. CHERERE

JUDGE