



**Gaunya v Obwamo (Environment & Land Case 106 of 2005)
[2023] KEELC 21640 (KLR) (20 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21640 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 106 OF 2005
BN OLAO, J
NOVEMBER 20, 2023**

BETWEEN

JOSEPH OGUTU GAUNYA PLAINTIFF

AND

BONFACE RESSA OBWAMO DEFENDANT

RULING

1. Judgment was delivered by Omollo J on 29th April 2020 in favour of the Defendant herein in the following terms:
 - a. Registration of the Plaintiff as the sole owner of L.R Samia/Makhungu-Odiado/286 be and is hereby cancelled.
 - b. It is ordered that the suit land be sub-divided so that the Defendant be registered as proprietor of a portion which he is in occupation of measuring 2½ acres from L.R Samia/wakhungu-odiado/286.
 - c. The plaintiff shall pay the defendant the costs of the counter-claim.
2. A decree followed and the costs were subsequently taxed by the Deputy Registrar on 24th June 2020 at Kshs.172,920.
3. By an application dated 6th July 2020, the Defendant as decree holder sought the following orders:
 1. That the Deputy Registrar of this Honourable Court be authorized to sign on behalf of the Defendant/applicant for consent of Land Control Board for both sub-divisions, mutation form and transfer forms in respect of L.R Samia/Wakhungu-Odiado/286.



2. That a qualified surveyor be authorized to excise 2.5 acres from L.R Samia/Wakhungu-Odiado/286.
 3. That costs of this application be provided for to the applicant.
4. That application was allowed by Omollo J on 29th July 2020.
5. The defendant has now filed another notice of motion dated 27th June 2023 citing section 3a of the [Civil Procedure Act](#) in which he seeks the following orders:
 1. That the Deputy Registrar be allowed to sign documents for transfer in place of the judgment debtor.
 2. That provision of title deed be dispensed on transfer.
 3. That costs of this suit be provided for to the Defendant.
6. The application is based on the grounds set out herein and supported by the affidavit of the Defendant.
7. The gist of the application is that following the judgment herein, and in order for the mutation to be prepared to give effect to the decree, the Land Registrar requires the title deed in respect to the land parcel No. Samia/Wakhungu-Odiado/286. The plaintiff, having lost the case is bitter and cannot surrender the title deed to the said land to facilitate that process.
8. Though served through his counsel J. B. Otsiula & Associates, the Plaintiff did not file any reply to the application which is therefore un-opposed.
9. The prayer for the Deputy Registrar to sign the transfer documents on behalf of the plaintiff had in fact been allowed by this court on 29th July 2020. It is therefore spent and the defendant did not need to seek it again.
10. With regard to the prayer for an order that the production of the title deed be dispensed with, it is clear from the judgment delivered on 29th April 2020 that the title to the land parcel No. Samia/Wakhungu-Odiado/286 was cancelled and the court directed that the defendant be registered as proprietor of 2½ acres. That will require that the said title deed be surrendered or the production of the same be dispensed with. Otherwise, the Defendant will not be able to enjoy the benefits of his judgment. This Court has been informed, without rebuttal, that the Plaintiff is bitter having lost the case and cannot surrender the said title. This Court must therefore intervene so that the said judgment is not rendered hollow.
11. The Notice of Motion dated 27th June 2023 is accordingly allowed in the following terms:
 1. The Plaintiff shall within 30 days of service upon him of this ruling surrender the original title deed to the land parcel No Samia/Wakhungu-Odiado/286 to the Land Registrar Busia for cancellation so that the defendant is issued with his title deed for 2½ acres in accordance with the judgment delivered on 29th April 2020.
 2. In default of (1) above, the Land Registrar shall cancel the said title deed in his register and issue the Defendant with his title for the 2½ acres notwithstanding the absence of the original title deed.
 3. No order as to costs.



**RULING DATED, SIGNED AND DELIVERED ON THIS 20TH DAY OF NOVEMBER 2023 BY
WAY OF ELECTRONIC MAIL.**

BOAZ N. OLAO

JUDGE

