



Muthiora (Suing as the legal representative and administratrix of the Estate of Genaro Muthiora M'Mbirithi – Deceased) v Joseph (Sued as the legal representative and administrator of the Estate of Joseph M'Ikunyua M'Iringo (Deceased) (Environment & Land Case 241 of 2017) [2023] KEELC 22300 (KLR) (13 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22300 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 241 OF 2017
CK NZILI, J
DECEMBER 13, 2023

BETWEEN

PAULINE RIGIRI MUTHIORA (SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATRIX OF THE ESTATE OF GENARO MUTHIORA M'MBIRITHI – DECEASED) PLAINTIFF

AND

ZACHARY MURIKI JOSEPH (SUED AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF JOSEPH M'IKUNYUA M'IRINGO (DECEASED) DEFENDANT

RULING

1. The court is asked to issue an order that the Land Registrar Meru Central dispenses with the production of the original title deed for LR No. Nyaki/Mulathankari/745 to facilitate the excision $\frac{1}{4}$ of an acre from the title as decreed in this suit.
2. The reasons are contained in the affidavit of Pauline Rigiri Muthiora, the decree-holder, sworn on 30.9.2023. It is averred that the court delivered a judgment on 25.1.2023. That defendant/respondent possesses the original title deed but has refused or declined to submit it despite several letters requesting for it. The copy of records, letters, and decree marked as PRM 1 -3, respectively, to effect the decree, and for the end of justice to be met, the applicant urges the court to allow the application.
3. The application was served upon the defendant/ respondent's advocates on record on 17.10.2023. a return of service sworn by Kiogora Arithi's advocate was filed on 16.11.2023.



4. By a judgment dated 25.1.2023, the court decreed $\frac{1}{4}$ an acre of LR No. Nyaki/Mulathankari/745 to the plaintiff/applicant. A further order was made for the defendant to execute transfer documents in favor of the plaintiff within two months in default for the court's Deputy Registrar to sign the document.
5. The plaintiff/applicant returned to this court after almost 11 months, claiming that the defendant/respondent had frustrated the execution process. Notices to comply have been served upon the defendant's last known contact.
6. Section 31 of the [Land Registration Act](#) provides that a land registrar may dispense with the production of an original certificate of title or lease on registration of any dealing with the land for cancellation. Section 14 there at provides that a summons may be issued to any person to produce any instrument certificate or other document or plan relating to the land. A court order may not be necessary for the land registrar to exercise his powers.
7. The reluctance by the defendant/respondent to produce the original title has not been explained. I have not seen any communication from the Land Registrar rejecting the sub-divisions or calling for the production of the original title deed. Be that as it may, I order that the defendant/respondent, upon issuance of the summons by the Land Registrar Meru Central, shall surrender the original title deed within seven days after personal service with the summons in default of which the Land Registrar shall be at liberty to dispense with the production of the original title. The respondent shall bear the costs of the exercise. Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 13TH DAY OF DECEMBER 2023**

In presence of

Miss Mugo for the applicant

HON. CK NZILI

JUDGE

