



REPUBLIC OF KENYA



Mokaya & another v Nyangau & another (Environment & Land Case E099 of 2021) [2023] KEELC 22415 (KLR) (7 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22415 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E099 OF 2021**

**JM KAMAU, J
DECEMBER 7, 2023**

BETWEEN

GIDEON NYANGAU MOKAYA 1ST PLAINTIFF

BILLIAH NYAMOITA OKANGI 2ND PLAINTIFF

AND

MARY NYAMISA NYANGAU 1ST DEFENDANT

SIBIA KEMUNTO NYANGAU 2ND DEFENDANT

RULING

1. OchwaiN 15/3/2022, I granted Judgment to the Plaintiff as follows:-
 - a. A Declaration that the closure and subdivision of Land Parcel No. East Kitutu/ Kebirichi/945 and the registration of the 1st and 2nd Defendants as absolute proprietors of the resultant parcel East Kitutu/Kebirichi/2530 and 2531 is null and void and contrary to the distribution order given and dated on the 25th day of April 2005.
 - b. A Declaration that the Decision of the Rioma Land Disputes Tribunal Case No 4 of 2005 is invalid, null and void.
 - c. An order directing the cancellation of the title Nos. East Kitutu/Kebirichi/2530 and 2531 and the Register be rectified accordingly and that land parcel No. East Kitutu/Kebirichi/945 be subdivided and registered in accordance with the distribution order stated in the certificate of confirmation of grant issued on 25th day of April 2005 in succession cause No.195 of 1999 Kisii High Court.
2. On 30/10/2023 the Plaintiffs prayed for orders that: -
 - a. Spent



- b. That the County Surveyor, Nyamira be granted maximum security by the OCS, Nyamira Police Station at the time of surveying and fixing the boundary of Land Parcel Number East Kitutu/Kebirichi/945 as per the grounds annexed on 25/4/2005 vide succession cause No 195 of 1994, Kisii High Court.
 - c. This Honourable court be pleased to protect the Land Officers on duty before being intimidated while discharging their duties.
3. In the Defendants' grounds of opposition, the 2nd defendant urged the court to find the motion pre-mature, misconceived, incompetent and otherwise legally untenable. That this court has no jurisdiction since the matter herein is subject of a succession cause Judgment in Kisii High Court succession cause Number 195 of 1994.
4. In their Application, the Plaintiffs rightly say that the orders they want to execute in respect of which they seek the assistance of this court are from Kisii High Court Succession Cause No. 195 of 1994. In one of the grounds supporting the Application, specifically ground number (c) the Applicants say "that an order issued as per the certificate of confirmation of grant be complied and this will only be achieved if this court issues an order directing the OCS to offer maximum security to the Surveyor".
5. I therefore agree with the Respondents that this court should not confer upon itself jurisdiction to execute orders where a court of equal status has already pronounced itself and delivered the Judgment to be executed. It can only do so under order 22 Rule 4 of the *Civil Procedure Rules* where a court sends its Decree to another court for execution. This is not the case here and there would be no good reason for doing so.
6. The Application dated 30/10/2023 is consequently disallowed with costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 7TH DAY OF DECEMBER, 2023.

MUGO KAMAU

JUDGE

In the Presence of:-

Court Assistant: - Brenda

No appearance for the Plaintiff

Ms. Ochwal for the Defendant

