



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CIVIL SUIT NO 107 OF 2003

MARGARET NKIROTEPLAINTIFF/DSD

SARAH KARWITHA ELIJAHAPPLICANT

VERSUS

WILSON M'RINGERA.....1ST DEFENDANT/RESPONDENT

JONATHAN MARETE.....2ND DEFENDANT/RESPONDENT

JOHN MUBICHI.....3RD DEFENDANT/RESPONDENT

MARTIN POWEL.....4TH DEFENDANT/RESPONDENT

RULING

1. The applicant says that this application has been brought to Court Under the provisions of Order 63 (e) and Section 3 and 3 A of the Civil procedure Act. The application is dated 21st March, 2016 and seeks orders that:-

- a. *The Honourable Court be pleased to hear this application on priority basis.*
- b. *The Honourable Court be pleased to compel the 4th respondent to transfer L.R NO NYAKI/KITHOKA/3019 to the applicant or in the alternative to authorize the Court Executive Officer to sign all the necessary documents to effect the transfer of L. NO. NYAKI/KITHOKA/3019 to the applicant.*
- c. *The Honourable Court be pleased to order the 4th respondent to give vacant possession of L.R No. NYAKI/KITHOKA/3019 to the applicant and in default the Court do order for the eviction of the respondent and his agents from the applicant land.*
- d. *Costs be provided for.*

2. The application is supported by the affidavit of SARAH KARWITHA and has following grounds:

- a. *On 17/5/20016 the Court ordered that Plaintiff gets 0.69 acres out of L.R NO NYAKI/KITHOKA/1759.*
- b. *THAT the plaintiff died on 11/12/2008 before the transfer.*
- c. *The applicant was appointed on 6/3/12.*

- d. ***The 4th respondent has sub-divided the land but he has refused to transfer it to the applicant who is the legal representative of the plaintiff.***
- e. ***That the 4th respondent is contemptuous of the Court decree.***

3. I do note that the application seeks to have an order of this court implemented. It will not prejudice anyone if a ruling is delivered ex-parte. To that extent it has merit. However, ground E in the application may not be evincing the whole truth. I note that in an affidavit sworn by Martin Powel, the 4th defendant on 4th July, 2013 he stated as follows:-

- a. ***Paragraph 10: "That I am ready and willing to transfer the said portion to the Plaintiff's estate in compliance with this Honourable Court's decree provided the beneficiary /administrator of the Plaintiff's deceased estate meets my costs of Subdivision and presently at Kshs. 19,625/= and also meet the other costs necessary to effect the transfer".***

Paragraph 13- " That the Plaintiff's legal representative is refusing to pay the Kshs, 19,625/= which I have already expended on the Plaintiff's behalf".

4. The 4th defendant has pelucidly indicated that he is willing to transfer the concerned portion of land to the plaintiff.

5. I issue the following orders:-

1. ***Once the Applicant pays the Subdivision costs incurred by the 4th respondent and also meets the costs incidental to the apposite transfer, the 4th defendant is ordered to transfer 0.69 acres to the applicant and should he not do so, this Courts' Executive Officer is authorized to sign all the necessary documents BUT upon satisfying himself that the applicant has met all the costs indicated herein.***
2. ***I decline to grant prayer C and direct that my order 1 above be implemented before this prayer can be considered.***
3. ***Costs shall be in the cause.***

It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 14TH DAY OF APRIL, 2016 IN THE PRESENCE OF :

cc: Lilian

Mutura h/b Kimathi for the Applicant

P.M. NJOROGE

JUDGE