



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 9 OF 2007**

**GABRIEL MUTHEE ISMAEL.....PLAINTIFF**

**VERSUS**

**ALEX MARETE alias SILAS MUGAMBI.....DEFENDANT**

**RULING**

1. The application dated 31.5.2021 brought under **Sections 1A, 1B, 3, 3A and 63 of Civil Procedure Act** seeks that:-

**1) The court grants an order cancelling all the subdivisions in respect to L.R Nyaki/Kithoka/137 and have the land revert to the original number for purposes of execution of the decree in the matter.**

**2) An order directed at the Land Registrar Meru Central to dispense with the production of the original title to the aforesaid number or any of the subdivisions thereof in implementation of the decree.**

**3) An order empowering the Executive Officer of this court to execute all the necessary conveyance documents to have the defendant's established share of 0.182 Ha. be transferred to him as per the decree.**

2. The application is supported by an affidavit sworn by Alex Marete on 31.5.2021. The grounds upon which the application is made are that the matter was concluded on 8.5.2019 and a decree issued on 29.8.2019 whereof the plaintiff declined to execute the decree. That the land surveyor when he went to implement the decree, still the plaintiff had declined to cooperate only to discover the plaintiff during the pendency of the suit caused a mutation proposing several subdivisions which were irregular hence the need to consolidate the land into the original number for ease of the implementation of the decree.

3. The decree issued on 21.8.2019 was clear that the land shall be shared as per the portions of the land parcels they occupy, the boundary being Kagwa Nkuuguru stream. The defendant was to meet the surveyor's expenses in the subdivision. The plaintiff was to facilitate the transfer but the defendant was to pay for the transfer fees.

4. There is no indication in the application herein if the applicant performed his part of the consent judgment. Again the requests for the compliance have not been attached to the supporting affidavit. The mutation form attached precedes the consent decree and there is no indication that the Land Registrar was served with the decree for the implementation and has declined to act on it.

5. Further, all the other issues being raised in the application were taken care of in the consent judgment. Unfortunately the applicant has not indicated why he has not executed the decree since its issuance.

6. Similarly, there was in existence a caution which parties appear to have lifted by consent on 13.5.2019.

7. Lastly, there is no affidavit of service to show that this the application has been served upon the plaintiff.

8. In view of the foregoing, I find no merits in the application. The same is hereby dismissed with costs.

9. The normal execution process shall proceed.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 26<sup>TH</sup> DAY OF JANUARY, 2022**

**In presence of:**

No appearance for parties

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**