



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

E.L.C. CASE NO. 220 OF 2013

NDEGE KABIBI KIMA.....1ST PLAINTIFF

AGNES WANGECHI.....2ND PLAINTIFF

VERSUS

KARINGA GACIANI.....1ST DEFENDANT

BEATRICE MUTHONI KARINGA.....2ND DEFENDANT

EUNICE WAGATWE KARINGA.....3RD DEFENDANT

MWANGI KARINGA.....4TH DEFENDANT

DENIS MURIMI KARINGA.....5TH DEFENDANT

MARY MUTHONI KARINGA.....6TH DEFENDANT

SARAH WANJIRU NJOGU.....7TH DEFENDANT

JOHN WAWERU KARINGA.....8TH DEFENDANT

SAMUEL WACHIRA KARINGA.....9TH DEFENDANT

FRANCIS GITHINJI KARINGA.....10TH DEFENDANT

FREDRICK KABATIA KARINGA.....11TH DEFENDANT

JACKSON MUTHONI KARINGA.....12TH DEFENDANT

RULING

1. The applicant vide a Notice of Motion dated 3rd October, 2017 and filed on 6th October, 2017 is seeking the following orders: -

a. That the Honourable Court be pleased to order the Deputy Registrar to execute all the transfer documents to enable the transfer of (1) one acre each to the plaintiffs out of title number Mutira/Kaguyu/4932, 4933, 4934, 4935, 4936, 4937, 4938, 4939, 4940, 4941, 4942 and 4943.

b. That the defendants do produce the title deed in respect to land parcel numbers Mutira/Kaguyu/4932, 4933, 4934, 4935, 4936, 4937, 4938, 4939, 4940, 4941, 4942 and 4943 within the next seven (7) days and in default the Land Registrar Kirinyaga County do dispense with the production of the original title deed and the relevant documents required to effect transfer.

c. That the officer in charge Kerugoya Police Station do provide security during the exercise.

d. That the costs of this application be provided for.

2. The application is based on the grounds outlined on the face of the application, supporting affidavit and further affidavit.
3. The respondents opposed the said application vide Grounds of Opposition dated 31st, October, 2017 and filed on 1st November, 2017.

APPLICANTS' CASE: -

4. The applicant's case is that they sued the defendants vide a plaint dated 21st December, 2011 and judgment was delivered in their favour as tabulated in the decree annexed as **NKK1**.
5. The defendants sought stay of the said judgment, however, the same was dismissed on 14th July, 2017.
6. The defendants, having been aggrieved by the judgment of the court, lodged an appeal at the Court of Appeal at Nyeri being Civil Appeal No. 9 of 2017. However the same was dismissed for lack of merit on 9th July, 2021.

RESPONDENTS' CASE:

7. The respondents opposed the application by way of grounds of opposition dated 31st, October, 2017 and filed on 1st November, 2017.
8. In a nutshell, the respondents' case is that they had preferred an appeal against the judgment herein before the Court of Appeal at Nyeri and they stand to be prejudiced and suffer irreparably if the application was heard before the said appeal and that the same would be rendered nugatory.

ANALYSIS: -

9. I have considered the instant application, the grounds set out therein, the supporting affidavit, further affidavit and the annexures thereto as well as the relevant law.
10. The jurisdiction of this Court to make further orders after pronouncement of judgment in order to facilitate execution of a decree is provided under **Section 38 of the Civil Procedure Act** which provides that: -

“Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree — (a) by delivery of any property specifically decreed; (b) by attachment and sale, or by sale without attachment, of

any property; (c) by attachment of debts; (d) by arrest and detention in prison of any person; (e) by appointing a receiver; or (f) in such other manner as the nature of the relief granted may require: ...”

11. In this matter, the applicants obtained judgment in their favour on 11th November, 2016 and the respondents who were dissatisfied appealed against the same. However, the said appeal was dismissed.
12. The applicant has stated that the orders sought are necessary in order to enable them enjoy the fruits of their judgment.
13. I have looked at the resultant decree marked as annexure **NKK1** in the Applicants' supporting Affidavit as well as the judgment delivered on 11th November, 2016 and I am convinced that indeed judgment was entered in their favour.
14. I have looked as well at annexure **NKK1** in the further affidavit and I am also satisfied that the Respondents' appeal was dismissed.
15. I therefore find that there is no reasonable cause to deny the applicants the orders sought as successful litigants are entitled to enjoy the fruits of their judgment.

CONCLUSION: -

16. From the foregoing, I am satisfied that the applicants' application is merited as the same will enable the execution of the resultant decree herein.

In the upshot, I allow the said application with costs to the applicant.

RULING READ, DELIVERED AND SIGNED IN OPEN COURT AT KERUGOYA THIS 21ST DAY OF JANUARY, 2022.

.....

HON. E. C. CHERONO

ELC JUDGE

In the presence of:

1. *Ms Kimata holding brief for Mr. Kahiga for the Defendant*
2. *Ms Ndungu holding brief for Mr. Ngigi for the Plaintiff*
3. *Kabuta – Court clerk.*