



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

E LC 227 OF 2013

JADIEL KIRONGO M'ITHIANO.....APPELLANT

VS

JULIUS GATOBU M'ITHIANO.....RESPONDENT

RULING

1. This application is dated 2nd November, 2016 and seeks orders;

(a) *The Honourable court be pleased to hear this application ex-parte in the first instant.*

(b) *That this Honourable court do make an order for removal of any restriction and/or any caution placed on land parcel No. NYAKI/MULATHANKARI/54 and NYAKI/THUURA/1658.*

(c) *Costs of this application be provided for.*

2. This application is supported by the affidavit of JEDIEL KIRINGO and has the following grounds:-

(I) *That this matter was heard and determined way back on 17th November, 2014.*

(ii) *That the award herein was not executed and it was confirmed as the judgment of this honourable court.*

3. I do not agree that with the applicants advocate assertion that the alleged judgment obtained by the applicant in 2014 was adopted as a judgment of the court. Instead, this court delivered a judgment on 17th day of November, 2014 in an appeal filed by the applicant. In that judgment, the applicants' appeal was dismissed.

4. The respondent in the appeal filed an application dated 9th June, 2016 which sought orders seeking to facilitate the execution of judgment of this court. Among other issues, it was claimed that the applicant herein had disregarded this court's orders contained in its judgment which was delivered on 17th November, 2014.

5. In its ruling dated 20th July, 2016 this court ordered as follows;

(I) *The apposite Land Registrar is ordered to forthwith remove any encumbrances, cautions, injunctions, inhibitions and or restrictions, if any exist, placed on Land Parcel No. Nyaki/Mulanthankari no. 54 and Nyaki /Thuura No. 1658.*

(2) The Executive Officer of this court is empowered by the court to execute all the relevant documents necessary for the implementation of Order 1 above.

(3) The applicant Julius Gatobu M'Ithiano, to meet all the costs incidental to the implementation of the prayers granted by the court.

(4) It is so ordered.

6. A court of law can not issue orders in vain. The substantive order sought in this application was issued on 20th July, 2016. Issuing a similar order is veritably Pyrrhic. I decline to issue such an order. I therefore, dismiss this application.

7. I reiterate that the orders issued by this court on 20th July, 2016, in the application filed by JULIUS GATOBU M'ITHIANO, the applicants brother will remain the orders of this court. The applicant JEDIEL KIRONGO M'ITHIANO is at liberty to implement them.

8. I issue no order as to costs.

9. It is so ordered.

Delivered in open court at Meru this 30th Day of November, 2016 in the presence of;-

C.A Danie/James

Ken Muriuki h/b Wamache for the Applicant

P M NJOROGI

JUDGE