



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CAUSE NO. 288 OF 1999**

IN THE MATTER OF THE ESTATE OF **KIMILU NZAU KIVATI (DECEASED)**

**DAVID MUMO NDAMBUKI.....ADMINISTRATOR**

**VERSUS**

**MUTISYA KATULA.....APPLICANT**

**RULING**

1. The applicant has filed an application dated 29<sup>th</sup> January 2014 seeking for orders that; firstly, the court do direct the Machakos District Surveyor to go to land parcel number **Machakos/Kiandani/3682** (hereinafter “*the suit premises*”) and excise therefrom a portion measuring 0.5 hectares, in compliance with the consent order entered by the parties and recorded by this court on 29<sup>th</sup> September 2008. Secondly, that the respondent be directed to sign all the documents required to effect the transfer of the excised portion and obtain the Land Control Board Consents for transferring in default of which the Deputy Registrar shall sign the documents
2. The application is supported by a supporting affidavit deponed by the applicant who avers that: on 29<sup>th</sup> September he entered into a consent with the respondent to transfer him 0.5 Hectares out of the suit premises which portion he had acquired as a purchaser for value from the deceased. The consent is yet to be implemented and he requires the surveyor to excise the portion that belongs to him.

**Analysis**

3. I have perused the court record and established that indeed on 29<sup>th</sup> September 2008, the petitioner and the objector counsels were present before **Lenaola J.** where they recorded a consent. The consent reads:

***“The application dated 24<sup>th</sup> November 2004 be allowed in the following terms:***

- a. ***The petitioner herein do transfer to the applicant 0.5 hectares out of Machakos/Kiandani/3682;***
- b. ***The said 0.5 hectares includes that portion that had already been sold by the applicant to one Harrison Muthoka Mulela,***
- c. ***The restriction registered against the said properties be and are hereby lifted on condition that order no. 1 above is effected,***
- d. ***Each party to bear its own costs.”***

4. The consent clearly indicates that the petitioner was amenable to transfer of 0.5 hectares out of the suit premises to the applicant and was required to lift any restrictions registered therein.
5. Indeed this application by the applicant was served on the petitioner herein and an affidavit of service dated 22<sup>nd</sup> May 2014 was filed in this court as proof of service. No replying affidavit was filed by the petitioner and as such the application is not opposed.
6. I therefore see no reasons why the application should not be granted as prayed. Subsequently, I grant prayers 1 and 2.
7. Costs of this application are awarded to the applicant

**DATED, SIGNED and DELIVERED at MACHAKOS this 23<sup>RD</sup> day of MAY, 2014.**

**L.N. MUTENDE**

**JUDGE**