



**Kingori v Njoroge (Environment & Land Case 159 of 2014)
[2022] KEELC 2403 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 2403 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 159 OF 2014**

**EO OBAGA, J
APRIL 28, 2022**

BETWEEN

ANDREW KAREMI KINGORI PLAINTIFF

AND

JOSEPH WAWERU NJOROGE DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 12th January, 2022 brought by the Plaintiff Decree Holder/Applicant seeking a review of the Judgment which was delivered on 15th November, 2018. The Applicant had sued the Judgment Debtor/Respondent claiming an order of specific performance in respect of LR No. Ngeria/Kabongo Block 1 (Kiambaa) measuring 1.00 hectares (suit property).
2. The Plaintiff had purchased 1.2 acres of the suit property vide a sale agreement dated 8th February, 2002. At the time of the purchase of the suit property, the Respondent had pretended that he has title to the suit property. This turned out not to be the case. The Respondent actually obtained title to the suit property on 7th May, 2004.
3. The Respondent obtained consent of the Land control board with a view of transferring the portion sold to the Applicant but there was no transfer as the Respondent did not surrender the original title. This is what prompted the Applicant to file a suit for specific performance. The Judge who delivered judgment did not specify the portion which the Applicant was to get. This is what posed a challenge in executing the Judgment because the Respondent is not being co-operative. If the judgment were to be executed as it is, it will mean the entire parcel will be registered in the name of the Applicant.
4. The Applicant therefore contends that it is important for the Judgment to be reviewed so that he can be registered as owner of the portion which he purchased and the remainder to be registered in the Respondent's name. The Respondent who was served did not file grounds of opposition or replying affidavit.



5. I have gone through the judgment as well as the evidence which was adduced by the Applicant during the ex-parte hearing. The Respondent tried to set aside the ex-parte judgment but his application was dismissed. From the evidence, it is clear that the Applicant purchased 1.2 acres out of the suit property.
6. The Applicant had filed the suit in person. He did not specify the portion he was claiming in the plaint. Mutation of the suit property has already been done. The plot which the Applicants is supposed to be given is identified as plot No. 267 measuring 0.52 hectares. The Applicant has therefore shown that there is sufficient reason to enable this court review the Judgment. I accordingly review the judgment dated 15th November, 2018 as follows.
 - 1) An order of specific performance is granted in favour of the Plaintiff directing the Defendant to sign transfer forms in favour of the Plaintiff for a portion measuring 0.52 hectares out of LR No Ngeria/Kabongo Block 1 (Kiambaa) 138 failing which the Deputy Registrar of this Court do sign the necessary forms on behalf of the Defendant.
 - 2) The Defendant shall pay costs of this suit as well as the costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 28TH DAY OF APRIL, 2022.

E. OBAGA

JUDGE

In the presence of;

Mr. Kigen for Mr. Songok for Plaintiff.

Court Assistant –Albert

E. OBAGA

JUDGE

28TH APRIL, 2022

