



REPUBLIC OF KENYA

High Court at Meru

Environmental & Land Case 94 of 2012

JOSPHAT KITHINJI RIMBERE AND 4 OTHERS.....APPLICANT

VERSUS

JULIUS KIREMA RIMBERE.....RESPONDENT

RULING

The application herein was brought to Court by way of Notice of Motion dated 11th September 2013 and was grounded upon Section 1A and 1B, 3 and 3A of the Civil Procedure Act and Order 3 Rule 9 of the Civil Procedure Rules 2010. The application sought orders:

- (a) **THAT** the Application be certified urgent and in view of its urgency be admitted to hearing ex- parte in the first instance and on priority basis.
- (b) **THAT** the Honourable Court be pleased to call for the Original record in Meru C. M. LDT No.5/2006 with a view to enforcing the Judgment therein.
- (c) **THAT** the Honourable Court be pleased to order and direct the Land Registrar – Meru, to dispense with production of the original Title Deed in **NYAKI/MULATHANKARI/338** and proceed to register the applicants in accordance with Judgement of the Court below.
- (d) **THAT** the Court be pleased to make any such other and or further directions as it may, in its own discretion please in the interest of justice and for purpose of full and final implementation of the decree in Meru C. M. LDT 5/2006.
- (e) **THAT** Cost of the instant proceedings be paid to the applicants by the respondent.

The application was fixed to be heard Inter Partes on 8.2.2013. The advocate for the applicants reminded me that the Court had on 28.11.12 ordered the applicants to serve upon the respondent the hearing date. He pointed that he had done so and despite service upon the respondent's advocate, the advocate was not in Court. He therefore urged the Court to be heard as the respondent had refused to appear in Court despite service.

He pointed out that prayers (a) and (b) in his application dated 11th September, 2012 had been spent. He was now seeking prayers (c) and (e) and was relying on the grounds set out on the face of the application and the supporting affidavit of the 1st applicant on his own behalf and on behalf of the other applicants.

Order (c) was sought to facilitate the implementation of orders of the lower Court. He pointed that

the respondent despite being aware of the Judgment in the lower Court had refused to surrender the Original title relating to the Suit land. The order sought required that the Land Registrar should dispense with production of the Original Title Deed and proceed to register the applicants in accordance with the Judgment of the Lower Court.

I have carefully considered the submissions herein. I also note that the application was not opposed. In the circumstances, I order:

- 1. That the Land Registrar – Meru dispenses with production of the Original Title Deed in NYAKI/MULATHANKARI/338 and do proceed to register the applicants in accordance with the Judgment in Meru C.M. LDT 5/2006.**
- 2. Costs are awarded to the applicants.**

Written and Signed in Meru this 15th day of April, 2013.

**P. M. NJOROGÉ
JUDGE**

Delivered in Open Court this 18th day of April 2013 in the presence of:

Nyenyire h/b for Ndumbi for applicants

Isaboke for respondent - Absent

**P. M. NJOROGÉ
JUDGE**