



REPUBLIC OF KENYA

High Court of Kisii

Civil Suit 144 of 1995

JOSHUA NYARIBO NYARIBO.....PLAINTIFF

V

JOHNSON MOSE NYANGAU.....DEFENDANT

RULING

1. The Notice of Motion application before me was filed eight years ago. To be specific, on 23rd June, 2005. On inquiry, the court was informed by the advocate for the Plaintiff/Applicant that the application could not be listed for hearing earlier due to the many other applications that had been filed in this matter by the defendant/respondent that had to be disposed of first before the present application. The ruling in the last of such applications was delivered on 4th October, 2012. In this application, the Plaintiff is

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seeking an order that this court do authorize the Deputy Registrar of this court to sign all documents as may be necessary to effect the transfer of a portion of land known as LR. No. Nyansiongo Settlement Scheme/105 to the Plaintiff. The Plaintiff's application which is brought under section 3A of the Civil Procedure Act, Cap.21 Laws of Kenya is brought on the ground that the Plaintiff is desirous of executing the decree issued by this court on 30th November, 1999 and that, the Plaintiff has not been able to do so because the defendant has refused to execute the documents necessary to have the suit property, namely,

LR. No. NYANSIONGO SETTLEMENT SCHEME/105, surveyed for the purposes of curving out there from a portion measuring seven (7) acres to be registered in the name of the Plaintiff pursuant to the decree aforesaid. The application is supported by the Affidavit of the Plaintiff sworn on 23rd June, 2005 in which he has deposed that although the defendant was served with the decree of the court that required him to transfer to the Plaintiff a portion of the

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suit property measuring seven (7) acres, the defendant has refused and/or neglected to do so. The Plaintiff contends that in the circumstances, it is only fair and just for the Deputy Registrar of this court to be authorized to execute the necessary documents to facilitate the transfer and registration of the said portion of the suit property in the name of the Plaintiff. The application is not opposed by the defendant.

2. On 30th November, 1999, this court issued a decree in favour of the Plaintiff through which the district surveyor was ordered to survey the suit property and excise a portion measuring seven (7) acres to be registered in the name of the Plaintiff. The Plaintiff was ordered to meet the cost of the survey and transfer of the said portion into his name. The Plaintiff has now come to this court contending that the said decree has not been executed thirteen (13) years down the line because of the defendant's failure to execute the documents necessary to give effect to the said decree. The Plaintiff seeks the assistance of the court in the

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execution of the said documents so that the decree of the court may be realized. The defendant has not denied the averments contained in the Plaintiff's affidavit in support of the application and has not opposed the application.

3. I have considered the Plaintiff's application and the affidavit in support thereof. I have also considered the Plaintiff's advocate's submission. I am satisfied that the application is well merited. The court has inherent power to facilitate the execution of its orders. I am therefore inclined to allow the application dated 23rd June, 2005. The application cannot however be allowed as prayed as the order sought is crafted in very wide terms and may be open to abuse. I therefore authorize the Deputy Registrar of this court to execute only such documents as are necessary to transfer a portion measuring seven (7) acres of LR. No. Nyansiongo Settlement Scheme/105 to the Plaintiff in accordance of the decree of this court given on 30th November, 1999. The cost of the

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application to the Plaintiff.

Dated, signed and delivered at Kisii this 17th day of May, 2013.

S. OKONG'O,

JUDGE

In the presence of:-

Mr. Bosire for the Plaintiff.

No appearance for the Defendant.

Mobisa Court Clerk.

S. OKONG'O,

JUDGE.

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