



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENTAL & LAND DIVISION**  
**ELC CASE NO. 5704 OF 1992(O.S)**

**HUDSON MOFFAT MBUE.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**THE SETTLEMENT FUND TRUSTEE.....1<sup>ST</sup> DEFENDANT**

**LILIAN WANJIKU GITONGA.....2<sup>ND</sup> DEFENDANT**

**NAOMI WANJIRU KAMANDE.....3<sup>RD</sup> DEFENDANT**

**RULING**

The application before me is the Notice of Motion dated 3<sup>rd</sup> February, 2004 by the plaintiff which seeks the following orders:

1. That this Honourable court do execute the decree given on 27<sup>th</sup> September, 1996 against the legal representatives of the 3<sup>rd</sup> Defendant (if any)
2. That the Deputy Registrar be pleased to execute the transfer documents form plot No. 815 out of L.R Laikipia/Nyahururu/39 in favour of the applicant.
3. That costs of this application be in the cause.

The application is premised on the following grounds.

- a. This court gave a decree on 27<sup>th</sup> September, 1996 ordering the 3<sup>rd</sup> defendant to excuse plot NO. 815 from L.R.Laikipia/Nyahururu/3a in favour of the applicant.
- b. The 3<sup>rd</sup> Defendant has since died before executing the necessary transfer documents.
- c. It fair and just for the Deputy Registrar to execute the transfer documents in place of the 3<sup>rd</sup> defendant.

The application is further supporting by the grounds contained in annexed affidavit of the plaintiff sworn on 3<sup>rd</sup> February, 2004.

The application and the hearing notice of the Notice of Motion was served upon the legal representatives of the defendants but the defendants did not file any response to the application nor attend the court when the application was scheduled to be heard and the court on 10<sup>th</sup> June, 2013 allowed the plaintiff to

proceed ex parte. The plaintiff counsel sought to rely on the application and grounds and the affidavit sworn by the plaintiff in support of the application.

I have perused the application and the affidavit in support of the same and I have reviewed the decree given on 27<sup>th</sup> September, 1995 and issued on 5<sup>th</sup> July, 1996 and I am satisfied the court made the following orders arising from a filed consent letter by the parties.

1. That the 3<sup>rd</sup> Defendant do excise the plot no. 815 out of L.R laikipia/Nyahururu/3a allocated to and currently occupied by the plaintiff.
2. That the official boundaries of plot No. 815 aforesaid be verified by the district surveyor according to the official map and settlement fund trustees records.

The plaintiff has deposed that the 3<sup>rd</sup> defendant has since passed on and he is unaware who the personal legal representatives of the defendant are. There is no evidence that the decree of the court has been appealed from, varied or reviewed. Court orders and decrees are intended to be complied with and the plaintiff is but seeking compliance with the court order or the decree of the court. By granting the orders sought the court will be effectuating the orders of the court.

I am satisfied the plaintiff application has merit and accordingly grant the prayers sought in the Notice of Motion by the plaintiff dated 3<sup>rd</sup> February, 1996 and for clarity state it is noted that he court's decree was given on 27<sup>th</sup> September, 1995 and not 27<sup>th</sup> September, 1996 as indicated in the plaintiffs Notice of Motion.

I make no orders as regards costs for this application.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF JULY 2013.**

**J. M. MUTUNGI**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendants