



**Nationwide Finance Co. Ltd v Industries & another; Mbuthia & another (Interested Parties)
(Environment & Land Case 3231 of 1985) [2025] KEELC 3224 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3224 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 3231 OF 1985**

OA ANGOTE, J

APRIL 8, 2025

BETWEEN

NATIONWIDE FINANCE CO. LTD PLAINTIFF

AND

MECK INDUSTRIES 1ST DEFENDANT

MICHAEL KIMANI 2ND DEFENDANT

AND

GEORGE GIKUBU MBUTHIA INTERESTED PARTY

JOHN MATHARA MWANGI INTERESTED PARTY

RULING

1. Before this court for determination are three applications: the Interested Party's application dated 23rd May 2022, the Plaintiff's application dated 25th April 2022 and the proposed Interested Party's application dated 27th May 2022.
2. When this matter came up for mention on 5th March 2025, it was noted that the Interested Party, Mr. George Mbuthia, died on 23rd November 2023 and as one year had passed since his death, his application dated 23rd May 2022 had abated.
3. This court also takes notice that the proposed Interested Party's application dated 27th May 2022 was disposed of by this court through a ruling dated 23rd February 2023. In the ruling, this court allowed the joinder of John Mwangi Mathara as an interested party in this party. In its ruling, this court also made a finding that the Interested Party, John Mathara Mwangi, had purchased the suit property, LR No. Nyandarua/Karati/728 during an auction sale conducted under the order of this court.



4. The court further held that in accordance with Order 22 Rule 79 of the Civil Procedure Rules, the issuance of the certificate of sale is conclusive proof that John Mathara Mwangi is the legal owner of the suit land.
5. The ruling herein is therefore with respect to the Plaintiff's application dated 25th April 2022, which is filed pursuant to Section 3 and 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules 2010, Section 31 of the Land Registration Act and Section 8(1) of the Land Control Board Act. In the application, the Plaintiff has sought the following orders:
 - a. This Honourable court be pleased to order that the Deputy Registrar of the Environment and Land Court to execute, inter alia,
 - i. The transfer
 - ii. The application for consent of the land control board in Nyandarua County; and
 - iii. All other documents necessary for the purpose of effecting the transfer of the L.R. No. Nyandarua/karati/728 to John Mathara Mwangi.
 - b. This Honourable court be pleased to dispense with the production of the original title for LR No. Nyandarua/karati/728 to effect the transfer to John Mathara Mwangi.
 - c. The costs of this application be provided for.
6. The application is supported by an affidavit sworn by Catherine Muthiani, a Recoveries Officer at Consolidated Bank of Kenya Limited. In her sworn statement, she averred that by Legal Notice No. 136 dated 15th July 2002, the undertakings and banking businesses of the Plaintiff were vested in Consolidated Bank of Kenya Limited in accordance with provisions of the Consolidated Bank of Kenya Act.
7. She stated that pursuant to the decree given on 7th March 1988, the court ordered that the 2nd Defendant pay the Plaintiff Kshs. 372,060 with interest at 19% per annum and that the Plaintiff applied for the sale of LR No. Nyandarua/Karati/728 which was owned by the 2nd Defendant and a notification of sale was issued on 2nd December 2021. She deponed that the sale by public auction took place on 28th January 2022 and John Mathara Mwangi was the highest bidder.
8. Catherine Muthiani averred that John Mathara Mwangi has fully paid the purchase price of Kshs. 9,010,000. She deponed that the 2nd Defendant, in whose name the property is registered, has never appeared despite summons issued to him. She stated that it is not possible to trace the 2nd Defendant to execute the relevant documents to complete the transfer to John Mathara Mwangi.
9. According to the Plaintiff, it is in the interests of justice that the Deputy Registrar of this Court executes the relevant documents to complete the transfer of the property to John Mathara Mwangi so as to bring this old matter to a close.
10. This application was canvassed through written submissions which I have considered.

Analysis and Determination

11. The record of this court shows that judgment in this suit was entered and a decree was issued on 7th March 1988. In the decree, the court ordered:
 - a. That the 2nd Defendant do pay to the Plaintiff the sum of Kshs. 372,060/- together with interest thereon at the rate of 19% per annum from 12th August 1985 until payment in full.



- b. That the 2nd Defendant do pay to the Plaintiff the sum of Kshs. 20832/50 being its costs of this suit as certified by the Registrar of this court.
12. At the point of judgment, the 2nd Defendant had not entered appearance in this suit, despite issuance of summons to him. This is indicated in the decree. The undertakings of the Plaintiff have since been lawfully vested in Consolidated Bank of Kenya through Legal Notice No. 136 published on 25th July 2002.
13. The 2nd Defendant has never entered appearance in this matter. It is on this basis that the Consolidated Bank of Kenya has sought that the Deputy Registrar execute a transfer, the land control board application and all other documents necessary for the purpose of effecting the transfer of L.R. No. NYANDARUA/KARATI/728 to John Mathara Mwangi.
14. Section 98 of the *Civil Procedure Act* provides for the remedy of execution of instruments by order of court. It prescribes that:
- “Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”
15. As the land is agricultural land, the necessary documents include an application for land control approval. Under section 8(1) of the *Land Control Act* this court has powers to extend time within which a Land Control Board Consent can be obtained. Section 8(1) of the Act provides as follows:
- “An application for consent in respect of a controlled transaction shall be made in a prescribed form to the appropriate land control board within six months of the making of the agreement for the controlled transaction by any party thereof:
- Provided that the High Court may notwithstanding that the period of six months may have expired, extend that period where it considers that there is sufficient reason so to do, upon such conditions, if any, as it may think fit.”
16. The Plaintiff has additionally sought that this court be pleased to dispense with the production of the original title for the transfer of the suit property to the Interested party.
17. Section 31 of the *Land Registration Act*, No. 3 of 2012 provides that production of title is required on the registration of any dealing with the property. This requirement may however be dispensed with by the Land Registrar. This section provides as follows:
- “(1)If a certificate of title or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and, if the certificate of title or the certificate of lease shows all subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate of lease.(2)Where the disposition is a transfer, the certificate shall, when produced, be cancelled, and in that case a new certificate may be issued to the new proprietor.”



18. In circumstances where a party has made it difficult for a property to be transferred to a bona fide proprietor of the suit property, or where there is a forced sale of land, such as in this case, it would only be just for the court to direct the land registrar to dispense with the requirement of the production of title in order to meet the ends of justice.

19. This position was upheld by the court in *Simon Ng'ang'a Njoroge vs Daniel Kinyua Mwangi* [2016] eKLR as follows:

“The issue at hand is not a lost or destroyed certificate; it is the defendant who has refused to deliver the certificate. A look at section 31 shows that the registrar may dispense with the production of the original certificate, although generally, the original needs to be produced for him to proceed to register the disposition. I think we are dealing with a unique circumstance where a person who has lost a case, now wants to make it difficult for the successful party to procure registration in his name.

I think it is only fair that I order the Land Registrar to dispense with the production of the original certificate before proceeding to register the plaintiff as proprietor of the suit property.”

20. This court adopted this position in *Murea vs Njuguna* [2022] KEELC 2998 (KLR), where the court allowed a similar application to give effect to the decree of the court and to enable the Applicant to enjoy the fruits of their judgement.

21. Indeed, under Section 3A of the *Civil Procedure Act*, this court is clothed with inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

22. Being satisfied that John Mathara Mwangi lawfully purchased the suit property and that the 2nd Defendant cannot be traced, this court appreciates that the orders sought by the Plaintiffs are to facilitate the transfer of the suit property to John Mathara Mwangi. The Plaintiff's application is hereby allowed as follows:

- a. The Deputy Registrar of this court is hereby directed to execute, inter alia, the transfer, the application for consent of the land control board in whose jurisdiction the land is situated, and all other documents necessary for the purpose of effecting the transfer of L.R. No. Nyandarua/karati/728 to John Mathara Mwangi.
- b. This court hereby directs the Land Registrar, Nyandarua County, to dispense with the production of the original title for parcel of land known as Nyandarua/karati/728 and effect the transfer to John Mathara Mwangi.
- c. Each party shall bear their own costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 8TH DAY OF APRIL, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Mwihuri for Plaintiff

No appearance for Defendants

Court Assistant: Tracy

