



Ndovu Builders & General Contractors Ltd v Attorney General & 6 others (Environment & Land Case 43 of 2015) [2025] KEELC 3179 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3179 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 43 OF 2015**

AY KOROSS, J

APRIL 8, 2025

BETWEEN

NDOVU BUILDERS & GENERAL CONTRACTORS LTD PLAINTIFF

AND

ATTORNEY GENERAL 1ST DEFENDANT

DIRECTOR OF SURVEYS 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

LAND REGISTRAR – MACHAKOS 4TH DEFENDANT

DISTRICT SURVEYOR 5TH DEFENDANT

PETER MUSYOKI MAUYE 6TH DEFENDANT

JOSEPH MUSYOKI WAMBUA 7TH DEFENDANT

RULING

1. This ruling seeks to determine the notice of motion dated 3/07/2024 filed by the plaintiff in which it seeks the following reliefs from this court: -
 - a. That the court does order the 6th and 7th defendants to sign the mutation form for the land parcel nos. L.R. Nos. Muputi/Kiima Kimwe/2601, 2602, 2594, 2595 & 3601 within 7 Days.
 - b. That in the alternative, and in default of prayer (a), the court's deputy registrar does sign the mutation form on behalf of the 6th and 7th defendants.
 - c. That the costs of this motion be borne by the 6th and 7th defendants.
2. The motion is supported by the grounds set out in the body thereof and the supporting affidavit of the plaintiff's managing director, George Mutuku Masai, which he deposed on 3/07/2024.



3. In summary of both, the history of the dispute and the judgment of this court that was rendered on 4/10/219 were rehashed.
4. It was maintained that the plaintiff had made efforts to enforce the decision of this court to no avail. The steps he undertook towards this end were enumerated as follows.
5. Firstly, it sought the services of the county surveyor, who rectified the amendments to the survey map of the plaintiff's land and put the survey map in the same position prior to 2/08/2010, when the illegal ones were carried out unprocedurally.
6. Secondly, the survey exercise was carried out on 20/09/2023 and 15/01/2024, and the defendants herein who own the neighbouring parcels of land were involved in the survey exercise.
7. Consequently, and thirdly, the surveyor prepared the survey report and the mutation form to be signed by all parties involved in the exercise and who were affected by the survey exercise.
8. Lastly, the mutation form was to be signed by all parties affected and involved in the exercise. However, this last process hit a snag as the 6th and 7th defendants had vehemently declined to sign the mutation form despite several reminders.
9. Thus, he urged this court to allow the motion as no prejudice would be occasioned to the other parties.
10. None of the parties opposed the motion, and it was canvassed by the plaintiff's counsel Mr. Mutinda's oral submissions which he made on 3/02/2025, whereby he urged this court to allow the motion.
11. Having carefully considered the motion, its grounds, affidavit, and oral submissions, the following issues commend themselves for determination: whether the motion is merited and what orders should be issued, including an order as to costs. These issues will be handled together.
12. In moving this court, the plaintiff has placed reliance on Section 14 of the *Environment and Land Court Act* (ELC Act) which provides that the process of enforcement of the judgement, award, order or decree of this court shall be governed by the provisions of the *Civil Procedure Act* (CPA).
13. It therefore follows the relevant provision applicable where a party neglects or refuses to comply with a decree or order directing him to execute an instrument is found in Section 98 of the *Civil Procedure Act*, and it states: -

“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.”
14. A reading of this provision illustrates foremost, that a decree or order against a part directing him to execute certain documents such as conveyance must exist and once this threshold is met, then the court may nominate someone to execute or endorse as the case may be in place of the party originally directed to do so.
15. This court has scrutinised the final disposal orders, and it is evident, save for the issue of costs, this court only issued declaratory orders, which were issued in the following terms: -



- a. A declaration be and is hereby issued that the amendments made by the District Surveyor on 2nd August, 2010 or thereabouts to the Survey Map relating to Muputi/Kiima-Kimwe/2601 and effected by District Land Registrar are null, void and of no legal effect.
 - b. A declaration be and is hereby issued that the plaintiff is the legal owner of the land comprised in L.R. No. Muputi/Kiima-Kimwe/2601 and which it has fenced off on the ground and on which it has sunk a borehole.
 - c. The 6th and 7th Defendants to pay the costs of the suit and the counter-claim.
16. It is therefore crucial to understand the import of a declaratory relief and this court adopts the meaning of a declaratory relief that was defined by the Court of Appeal decision of Attorney General v Bala (Civil Appeal 223 of 2017) [2023] KECA 117 (KLR) (3 February 2023) (Judgment) in the following words: -
- “A declaratory order means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights.”
17. By this definition, it emerges that a declaratory judgment usually states the court’s authoritative position on an existing legal position, and it does not require anyone to do anything. It suffices that a declaratory judgment has very limited powers.
18. In its judgment, this court never directed the 6th and 7th defendants to execute any conveyance, contract or other document or to endorse any negotiable instrument, and it follows this motion is misplaced. Consequently, I conclude and find the motion is unmerited.
19. For the finding and reasons stated above, I hereby dismiss the notice of motion dated 3/07/2024, and since none of the defendants opposed it, there shall be no orders as to costs.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 8TH DAY OF APRIL, 2025.

HON. A. Y. KOROSS

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Miss Kioko for applicant.

N/A for respondent.

Ms Kanja Court Assistant.

