



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau v Gichovi & another (Environment & Land Case  
553 of 2017) [2022] KEELC 2405 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2405 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 553 OF 2017**

**JG KEMEI, J**

**MAY 12, 2022**

**BETWEEN**

**GLADYS WANJIRU KAMAU ..... PLAINTIFF**

**AND**

**EDWIN NJERU GICHOVI ..... 1<sup>ST</sup> DEFENDANT**

**MARY GATHONI GIKONYO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Applicant's application dated the 19/1/2022 is brought under article 40 (1) of the Constitution. It seeks the following orders;
  - a. Spent
  - b. That Mary Gathoni Gikonyo be enjoined as an Interested Party in this suit.
  - c. That the Court issue an order compelling Mary Gathoni Gikonyo to release the original title documents for the property namely LR RUIRU/RUIRU EAST BLOCK 2/10451 (suit land) within 7 days from the date of the order.
  - d. That the Court do issue such other further orders as it may deem fit to grant.
2. The application is premised on the grounds annexed thereto and the Supporting Affidavit of the Applicant sworn on the 19/1/2022. In it she deponed that she is the adjudged owner of the suit land and referred the Court to the Judgment of this Court issued on the December 18, 2019 for which a decree was extracted on the 4/2/2020. That to effectuate the said decree she requires the original title for the suit land which title is in the custody of the proposed Interested Party, Mary Gathoni Gikonyo.
3. That separately the said Proposed Interested Party filed a suit in the lower Court to wit; MCELC No 266 of 2020 Ruiru – Mary Gathoni Gikonyo Vs Edwin Njeru Gichovi & Gladys Wanjiru Kamau where



she obtained Judgement in her favour against the Defendants for the sum of Kshs 450,000/- together with damages and costs of the suit. That following the said Judgement, she avers that it is her belief that the proposed Interested Party does not need the original title currently in her possession to execute against the Defendant/Respondent in this case. She stated that attempts to get the title from the said proposed Interested Party has been futile.

4. She urged the Court to allow the application.
5. The proposed Interested Party opposed the application vide a Replying Affidavit dated the 7/2/2022 wherein she admitted that the title of the suit property is in the name of the Defendant and that she indeed has in her custody the original title. She also admitted filing the above suit in the lower Court. That the Applicant successfully applied to be removed from the suit. That she has a Judgment delivered on the 19/3/2021 against the Defendant herein in the sum of Kshs 838,830/-. That she instructed the firm of Fantasy Auctioneers to execute the decree but the same has failed as the Defendant has no attachable property save for the suit land and urged the Court to dismiss the instant application.
6. In a Supplementary Affidavit sworn on the 28/3/2022, the Applicant avowed that one of the orders she obtained in the Judgment was an order of specific performance. That the proposed Interested Party has not given any valid reason as to why she is refusing to release the title to enable her execute the Judgement in her favour.
7. On the 15/2/2022 the parties elected to canvass the application through written submissions. The firm of Chege Kariuki & Associates filed written submissions for the Applicant which I have read and considered. The Respondent and the proposed Interested Party failed to so file submissions.
8. The key issue is whether the Applicant's application has merit.
9. It is not in dispute that there is a Judgement of the Court in favour of the Applicant delivered on the December 18, 2019 wherein the following orders were issued;
  - a. That the order of specific performance be and is hereby issued.
  - b. That an order be and is hereby issued compelling the Defendant to present the application to the Land Control Board for consent to transfer and in default the Deputy Registrar of this Hon Court does sign the necessary application for consent to transfer to enable the Plaintiff present the same to the land control board consent to transfer.
  - c. The Plaintiff be awarded a sum of Kshs 200,000/- being damages for breach of contract.
  - d. The Plaintiff be awarded cost of the suit.
10. Upon this Judgement there is no suit available for the enjoinder of a third party. The Court is now functus officio. I say so because what remains in my view is the enforcement of the Judgement for which the Court gave the Deputy Registrar of this Court the power to execute the documents to effectuate the said orders.
11. If I am wrong on the above position, in any event the release of the original title in my view is a different cause of action that was not canvassed/determined in the just concluded case.
12. In the upshot the application is devoid of merit. It is dismissed with costs payable by the Applicant.
13. It is so ordered.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 12<sup>TH</sup> DAY OF MAY 2022 VIA MICROSOFT TEAMS.**



**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Ms. Kihara holding brief for Mr. Chege for the Plaintiff/Applicant

Defendant – absent

Nyauchi holding brief for Mageto for the Interested Party

Court Assistant - Phyllis

