



**Masai v Changwony & another (Environment & Land Case
407 of 2015) [2022] KEELC 3082 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3082 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 407 OF 2015**

EO OBAGA, J

MAY 12, 2022

BETWEEN

THOMAS KIPTOO MASAI PLAINTIFF

AND

FRANCIS KIBOR CHANGWONY 1ST DEFENDANT

KIPROTICH JUMA 2ND DEFENDANT

RULING

1. This is a ruling in respect of a Notice of motion dated 14th December, 2021 in which the Applicant seeks the following orders:-
 1. Spent
 2. Spent
 3. That an order be and is hereby issued compelling the Plaintiff/Respondent to deliver to the 1st Defendant's Advocates the Original Certificate of Title and /Discharge of Charge from the Agricultural Finance Corporation within such period as shall be directed by the court.
 4. That in the event of failure to comply with prayer 3 above, the County Land Registrar Uasin Gishu be authorized /directed to discharge all encumbrances in the register and to cause the Defendants to be registered as the proprietors thereto upon payment by the Defendants of the requisite charges.
 5. That the costs of this application be provided for.
2. The Plaintiff/Respondent had sued the Defendants/Applicants in which he sought for an order that the sale agreement between him and the Applicants had been terminated. The Applicants raised a



counter-claim in which they sought specific performance. The Respondent's suit was dismissed and the Applicants' counter-claim was allowed.

3. The Respondent preferred an appeal against the judgment and came for stay of execution pending hearing of the appeal. The application for stay was dismissed on 4th November, 2021. The Applicants requested the Respondent to sign documents to enable transfer of the suit land in favour of the Applicants but he refused to do so. The Applicants were forced to have the forms signed by the Deputy Registrar of this court.
4. The Applicants contend that during the pendency of this suit, the Respondent had charged the suit property to Agricultural Finance Corporation (AFC). When the Applicants lodged the documents of transfer with the Land Registrar, the Land Registrar demanded to have the original title and discharge of charge. The Applicants asked for these documents from the Respondent through his lawyer but this was not forthcoming. This is what forced the Applicants to file the present application.
5. The Respondent was given time to respond to the Application and file submissions within 7 days from 20th January, 2022. The Respondent neither filed a response to the application nor filed submissions as directed. This being the case, I find that the Applicants' application is unopposed. I allow the same in the following terms:-

1. The Plaintiff/Judgement Debtor is hereby ordered to deliver to the 1st Defendant/Decree holder's Advocates the original certificate of title and discharge of charge from the Agricultural Finance Corporation in respect of LR. No Plateau/Chepkongony Block 10 (Kileges Farm)/ 1 within 14 days from the date hereof.
2. In the event of the Plaintiff/Defendant Judgement Debtor failing to comply with order 1 hereinabove, the County Land Registrar Uasin Gishu is hereby directed to dispense with the original certificate of title and discharge of charge in respect of LR. No Plateau/Chepkongony Block 10 (Kileges farm)/1 and proceed to discharge all encumbrances in the register and proceed to register the Defendants/Decree Holders as proprietors upon payment of the requisite charges.
3. The costs of this application to be borne by the Plaintiff/Judgement Debtor.

It is so ordered.

****DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 12TH DAY OF MAY, 2022.**

E. OBAGA

JUDGE**

In the virtual presence of;

Mr. Rotich for Mr. Kibii for 1st defendant and Mr. Langat for 2nd Defendant.

Court Assistant –Albert

E. OBAGA

JUDGE

12TH MAY, 2022

