



**Masikonte v Ng'ang'a & 3 others (Environment & Land Case  
1124 of 2016) [2022] KEELC 3727 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3727 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1124 OF 2016**

**JO MBOYA, J**

**JUNE 30, 2022**

**IN THE MATTER OF THE ESTATE OF JAMES NG'ANG'A MACHARIA  
DECEASED**

**AND**

**IN THE MATTER OF: NAIROBI BLOCK 119/1831**

**AND**

**IN THE MATTER OF ORDER 37 RULE 1 AND 3 OF THE CIVIL PROCEDURE  
2010**

**BETWEEN**

**MAGADALIN SINTAMEI MASIKONTE ..... PLAINTIFF**

**AND**

**TERESA NJERI NG'ANG'A ..... 1<sup>ST</sup> DEFENDANT**

**ROSE NG'ANG'A ..... 2<sup>ND</sup> DEFENDANT**

**LIDYA WANJIKU ..... 3<sup>RD</sup> DEFENDANT**

**KIHARA NG'ANG'A ..... 4<sup>TH</sup> DEFENDANT**



## RULING

### Introduction and Background

1. *Vide* the Notice of Motion application dated 16<sup>th</sup> August 2021, the Plaintiff/Applicant approached the court seeking the following Reliefs/ Orders:
  - I. This Honourable Court be pleased to issue an order compelling the Land Registrar, Nairobi to prepare and issue a Lease Certificate in the name of the Applicant herein and cancel the existing one to all other necessary and all other consequential that the court may deem fit and just to grant.
  - II. Costs of the application be provided for.
2. The subject Application is premised and/or predicated on the various grounds, which have been enumerated at the foot thereof and same is further supported by the affidavit of the Plaintiff sworn on the 16<sup>th</sup> August 2021.
3. Though the application appears to have been served upon the Defendants, same neither filed a Repeating affidavit nor Grounds of opposition.

### The Plaintiff's/applicant's Case:

4. *Vide* Supporting Affidavit sworn on the 16<sup>th</sup> August 2021, the Plaintiff/Applicant herein, namely, Magdalen Sintamei Masikonte has averred that same entered into a sale agreement with one James Nga'ng'a Macharia, now deceased over and in respect L.R No. Nairobi Block 119/1831 (formerly Plot No. 493) whereby the deceased covenanted to transfer the suit property unto her.
5. The deponent has averred that despite the sale transaction between herself and the deceased, the latter failed to execute the requisite transfer instrument to and in her favor and therefore the suit property was never transferred and registered in favor of the Applicant.
6. Premised on the foregoing, the deponent has averred that same was therefore constrained to and indeed proceeded and filed the subject matter, which was thereafter resolved *vide* consent adopted by the court on 31<sup>st</sup> July 2017.
7. Further, the deponent has averred that pursuant to the foregoing consent the Deputy Registrar of this court was obliged to execute all the transfer instruments and incidental documents to facilitate the transfer of L.R No. Nairobi Block 119/1831 unto her.
8. It has further been averred that pursuant to the consent order, the Deputy Registrar of this court indeed proceeded to and executed the transfer instruments and incidental Documents, which were thereafter lodged with the Land Registrar for purposes of transfer and registration.
9. Nevertheless, the deponent has averred that despite the presentation and lodgment of the transfer instruments and documents with the Land registrar, same has since failed and/or refused to register the duly executed and lodged instrument, albeit without any reasonable and/or lawful cause.
10. Based on the foregoing, the deponent has therefore averred that it would be necessary and/or imperative that the court be pleased to grant the orders sought, so as to facilitate the transfer and registration of the instruments and to enable the Plaintiff to actualize the fruits of the Judgment herein.



### **Submissions By The Parties:**

11. The subject Application came up for hearing on the 14<sup>th</sup> June 2022 when counsel for the Applicant submitted that upon the filing of the subject suit, the parties herein entered into and executed a consent whereupon it was agreed that the Deputy registrar of this court does execute the transfer instrument and necessary documents to facilitate the transfer and registration of the suit property in favor of the Plaintiff/Applicant.
12. Further, it was submitted that pursuant to adoption and ratification of the consent, the Deputy Registrar indeed proceeded to and executed the transfer instrument, which was thereafter lodged and/or presented with the Land Registrar for purposes of registration and issuance of the Certificate of lease.
13. Nevertheless, it was submitted that despite the lodgment and/or presentation of the duly executed Transfer instrument, the Land Registrar has since failed and/or neglected to register the transfer instrument and thereby issue the requisite certificate of lease in favor of the Plaintiff/Applicant.
14. Based on the foregoing, counsel for the Plaintiff has therefore submitted that the failure and/or neglect by the Land Registrar to register the transfer instruments and the incidental documents, has denied and/or deprived the Plaintiff of her entitlement to own the suit Property.
15. In the circumstances, counsel therefore submitted that this is an appropriate application which ought to be granted and thereby facilitate the execution and/or implementation of the terms and tenor of the Judgment of the court.

### **Issues for Determination:**

16. Having reviewed the subject Application, as well as the affidavit in support thereof and having considered the submissions of counsel for the Plaintiff/Applicant, it is evident and/or apparent that only one issue does arise for determination, namely;
  - a. Whether the subject Application is meritorious.

### **Analysis And Determination**

#### **Issue Number 1**

#### **Whether the subject Application is Meritorious**

17. On the 31<sup>st</sup> July 2017, the Honourable court adopted and endorsed a consent which provides as hereunder;
  - a. The Deputy Registrar of the Environment and Land Court to sign the transfer and all the other necessary forms to enable the transfer of parcel of land in respect to L.R No. Nairobi Block 119/1831 to Magdalin Sintamei Masikonte.
  - b. Each party to bear own costs of the suit.
18. Pursuant to the foregoing consent, it is submitted that the transfer instruments were thereafter prepared and presented to the Deputy Registrar of this Honourable court, who proceeded to and executed same in accordance with the terms of the consent order.



19. On the other hand, it has been equally submitted that following the execution of the said Instruments, same were duly lodged with and/or presented to the Land Registrar, Nairobi, for purposes of registration and effective transfer of the suit property in favor of the Plaintiff/Applicant.
20. Notwithstanding the lodgment and/or presentation of the said documents to the Land Registrar, Nairobi, it is reported that the Land Registrar Nairobi, has since declined, failed and/or otherwise neglected to register the transfer instrument and thereby issue the requisite certificate of lease.
21. Owing to the foregoing, what becomes evident and/or apparent is that the Land Registrar, Nairobi has acted in dis-regard and/or otherwise in contempt of the orders of this Honourable, albeit without any lawful basis.
22. On the other hand, the failure, refusal and/or inaction by Land Registrar Nairobi has led to a scenario where the Plaintiff cannot benefit from and/or enjoy the fruits of the Judgment and decree herein.
23. To my mind, court orders are not made for the sake of it and hence same ought to be obeyed and/or complied with. For clarity, court orders are binding on the parties as well as such officers who are called upon to facilitate the implementation and/or enforcement of same.
24. To vindicate the foregoing observation, it suffices to adopt and restate the holding of the Court in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 Others* [2013] eKLR, where the Court held as hereunder;

“A court order is not a mere suggestion or an opinion or a point of view.

It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door.

If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

25. To my mind, the court having decreed that the suit property be transferred to and registered in favor of the Plaintiff/Applicant, it was obligatory upon the Land Registrar Nairobi to comply with and/or adhere to the terms of the court order.
26. For the avoidance of doubt, any inaction and/or refusal by the Land Registrar Nairobi, to comply with and/or adhere with the terms of the court order ought to be frowned upon and/or otherwise sanctioned.
27. Be that as it may, it is imperative to recall the dictum rendered in the case of *Hadkinson v Hadkinson* [1952] 2 All ER. 567, where it was held that:

“It is plain and unqualified obligation of every person against or in respect of, who an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

28. In a nutshell, it is incumbent upon the Land Registrar, Nairobi to proceed and register the Transfer instrument and incidental Documents, which were presented to and lodged with its offices.



**Final Disposition:**

29. Having considered the subject application, it is my humble view and considered opinion that same is merited and thus ought to be granted.
30. In the premises, the orders that commend themselves to me are as hereunder;
- a. The Land Registrar, Nairobi be and is hereby ordered to effect the registration of the Transfer Instrument and/or documents pertaining to and/or concerning L.R No. Nairobi Block 119/1831 in compliance with the consent order extracted on the 6<sup>th</sup> September 2017.
  - b. The Land Registrar, Nairobi shall proceed to and cancel any certificate of lease if any, existing in the name of James Ng'anga Macharia.
  - c. The Land Registrar, Nairobi shall proceed to and issue a certificate of Lease in favor of the Plaintiff/Applicant, notwithstanding the provisions of Section 31 of the *Land Registration Act*, 2012.
  - d. There shall be no orders as to costs.
31. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE 2022.**

**HON OGUTTU MBOYA,**

**JUDGE**

In the Presence of;

Kevin Court Assistant

Mr. Maito for the Plaintiff/Applicant

No appearance for the Defendants/Responents

