



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
LAND AND ENVIRONMENTAL DIVISION
CIVIL SUIT NO. 2663 OF 1982

JOHN F. MBUGUA NJOROGE.....PLAINTIFF

VERSUS

- | | |
|--|------------------------------|
| <p>GACHIRIRI MURIAMA)</p> | <p>1. GEORGE</p> |
| <p>KARIUKI)</p> | <p>2. PETER</p> |
| <p>MURIAMA)</p> | <p>3. NJERI</p> |
| <p>MURIAMA)</p> | <p>4. NYAMBURA</p> |
| <p>NJOROGE)</p> | <p>5. PETER</p> |
| <p>MURIAMA 'A')</p> | <p>6. GICHIRIRIRI</p> |
| <p>MURIAMA).....
DEFENDANTS</p> | <p>7. KAINAMIA</p> |
| <p>MURIAMA)</p> | <p>8. THUKU</p> |
| <p>MURIAMA)</p> | <p>9. KIBUNJA</p> |
| <p>MURIAMA)</p> | <p>10. MURAYA</p> |

MURIAMA)	11. JANE NJERI
MURAYA MURIAMA)	12. GEORGE
MURIAMA 'B')	13. GICHIRIRI

RULING

The Plaintiff filed an application by way of chamber Summons dated 10th October 2011, wherein he is seeking two substantive orders from this Court:

1. That this Court be pleased to issue an order directing the Deputy Registrar to sign the transfer documents for Title Number GATAMAIYU/KAMBURU/T.182 and any other documents to effect the Orders of Decree dated 5th March, 1992.
2. That the District Land Registrar Kiambu do dispense with the production of the Old Title Deed. No. GATAMAIYU/KAMBURU/T.182.

The grounds for the application are that on 5th March 1992, a Decree was issued ordering the Defendants to transfer the Plot Reference Number GATAMAIYU/KAMBURU/T.182 to the Plaintiff. The Defendants however refused to sign the necessary documents to facilitate effect the said Decree.

The Plaintiff has annexed as evidence a copy of the title deed and of a Certificate of Official Search dated 7th October 2011 with regard to the Land Reference Number GATAMAIYU/KAMBURU/T.182. The said documents show that the said property is registered in the name of George Gichiriri Muriama in trust for himself and 11 others, and there is a restriction registered on 26th April 1984 pending the determination of the suit herein. Also annexed as evidence is a copy of a Decree issued by the Senior Deputy Registrar of the High Court of Kenya on 5th March 1992, showing that judgment was given in the suit herein on 26th January 1990 by Honourable Justice Cockar.

The Defendants did not respond despite the said application and the hearing notice having been served on them, as attested to by the affidavits of service sworn by Francis Kibe Rugumi on 14th February 2012. At the hearing on of the application on 15th February 2012, the Plaintiff's Advocate, Mr. Kimathi, asked the Court to give a ruling based on his application dated 10th October 2011, the supporting affidavit and annexures thereto. Upon perusal of the Court file I also noted that there was an application filed by the Defendants dated 28th June 1993 seeking stay of execution of the orders made on 26th January 1990 pending the hearing of Civil Appeal No. 53 of 1992. There is no record of the said application having been heard or any ruling given on the same.

The application herein is brought under the provisions of sections 3, 3A and 98 of the Civil Procedure Act (Cap 21), and after consideration of the pleadings filed and evidence tendered by the Plaintiff, the first issue to be determined by this Court is whether section 98 of the Civil Procedure Act is applicable in this case. The said section states as follows:

“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.”

Section 98 comes into effect when there is neglect on the part of a party in complying with orders and decrees of this court. Evidence has been presented by the Plaintiff of a decree issued by the Senior Deputy Registrar of the High Court, Nairobi on 5th March 1992, and one of the orders therein is that the Defendants do transfer the Plot Reference Number GATAMAIYU/KAMBURU/T.182 to the Plaintiff forthwith. In addition, the Defendants have not disputed this decree nor the averments by the Plaintiff that they have refused to execute the said transfer. I therefore do find that section 98 of the Civil Procedure Act is applicable to the facts of this application, and that the Defendants have refused to comply with the decree of this Court.

The second issue for determination is whether the second prayer sought, that the District Land Registrar Kiambu do dispense with the production of the original title deed for Plot No. GATAMAIYU/KAMBURU/T.182, can be granted by this Court. I have considered this prayer, and particularly whether it will amount to a revision and/or variation of the judgment given herein on 26th January 1990 by Honourable Justice Cockar. I have come to the conclusion that it is a necessary prayer that is consequential to the said judgment, as litigation must come to an end.

This Court is also now also enjoined to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes under section 1A and 1B of the Civil Procedure Act, and possesses the inherent power to grant the order under section 3A of the said Act in the interests of justice. Furthermore, the Registered Land Act which is the regime under which Plot No. GATAMAIYU/KAMBURU/T.182 is registered, does provide in section 33 that a Registrar can dispense with the production of a title deed on the registration of any dealing relating to the land in question.

Arising from the reasons given in the foregoing, I hereby order as follows:

1. That the Deputy Registrar of the High Court of Kenya to sign the transfer documents for Land Parcel Number GATAMAIYU/KAMBURU/T.182 and any other documents in favour of the Plaintiff herein to effect the orders of the Decree issued herein on 5th March, 1992
2. That the District Land Registrar, Kiambu District, do dispense with the production of the original Title Deed for Land Parcel No. GATAMAIYU/KAMBURU/T.182 in the registration of the aforementioned signed transfer documents in favour of the Plaintiff .

There shall be no order as to costs.

Dated, signed and delivered in open court at Nairobi this ____8th____ day of ____May____, 2012.

P. NYAMWEYA

JUDGE