



REPUBLIC OF KENYA

High Court at Kitale

Civil Case 122 of 2009

WILLIAM BARASA MUKUBUYI.....PLAINTIFF.

VERSUS

ADAM KIMUNGUI NDAMWE.....DEFENDANT.

R U L I N G.

By an application dated 11th April, 2012, the applicant William Barasa Mukubuyi brought a notice of motion under sections 3, 3A and 63 of the civil Procedure Act seeking among other orders that the executive officer of the court be empowered to sign statutory transfer forms in favour of the applicant. The application was duly served upon the respondent Adam Kimungui Ndamwe who neither filed grounds of objection or replying nor appeared during the hearing. The application therefore proceeded exparte. The applicant deponed that he has a decree in his favour and that the respondent has declined to sign necessary statutory documents to enable him get his 1/8 of an acre from the suit land. He annexed a copy of the decree which shows that the High court decreed on 24/6/2011 that he was entitled to 1/8 of an acre out of land reference No. West Pokot/Siyoi/2099.

In order to realize the fruits of the decree, he also prays that the District Surveyor West Pokot be ordered to survey and excise 1/8 of an acre from the suit land and that the OCS West Pokot Division be ordered to ensure compliance of the court orders. I have gone through the submissions of the applicant as well as the application and the supporting affidavit and the annexure thereto. There is no doubt that the applicant has a decree in his favour where the High Court decreed on 24/6/2011 that he is entitled to an 1/8 of an acre out of land reference number West Pokot/Siyoi/2099. Court orders are never given in vain and where the court is shown that one party is unwilling to meet his part of the bargain, the law provides an alternative towards meeting the objective of the matter in issue. In the present case it has been shown that the respondent is unwilling to sign statutory forms to enable the applicant to realize the fruits of his judgment. It is natural given the manner in which the land was acquired that the respondent may not be willing to sign the necessary forms to facilitate transfer of the land to the applicant. I find that this is an appropriate case where the applicant ought to be assisted in realizing the fruits of his judgment. I will therefore allow the application in the following terms:-

- (1) The Deputy Registrar of the High Court is hereby empowered to sign all statutory forms to facilitate transfer of an 1/8 of an acre from West Pokot/Siyoi/2099 in favour of the applicant.
- (2) The district surveyor of the district under which plot No. West Pokot/Siyoi/2099 falls is hereby ordered to excise an 1/8 of an acre from the said land at the cost of the applicant.
- (3) The OCS of a police station nearest the suit land is hereby ordered to ensure that the process of survey and any other processes in furtherance of the court order is done in an orderly manner.

(4) The respondent to meet costs of this application.

It is so ordered.

[Dated, signed and delivered in open court on this 6th day of December, 2012.]

E. OBAGA.

JUDGE.

E. Obaga – J.

CC – Joan.

Applicant in person present.

Respondent absent.

E. OBAGA.

JUDGE.

6/12/2012.