

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Case 41 of 2007

JOHN MAINA MURIITHIPLAINTIFF

Versus

NGENGI GITHURI.....DEFENDANT

RULING

The subject matter of this ruling is the summons dated 5th October 2009. The summons is taken out by John Maina Muriithi, the applicant herein, pursuant to section 33(1) of the Registered Land Act and under order XXXVI rule 12 of the Civil Procedure Rules. The summons is supported by the affidavit of the applicant sworn on 7th October 2009.

When the summons came up for hearing, the applicant was granted leave to prosecute the application ex parte pursuant to the provisions of L. rule 16(3) of the Civil Procedure Rules when it became apparent that the Respondent did not file any grounds of opposition nor a replying affidavit despite having been served. In the summons the applicant applied for an order to dispense with the production of original title before the Land Registrar Nyeri, in respect of L.R. No.Iriaini/Gatundu/143 when the registering the decree herein. The applicant avers that he has been unable to obtain the original title despite making concerted efforts. The applicant averred that he had pledged the title to a certain shylock who retained the title as security for a friendly loan. When the applicant approached the aforesaid shylock he said he was told that the title had been released to the registered owner, Ngengi Githuri, the Respodnent herein. The Respondent is said to have denied having received the title.

I have considered grounds put forward on the face of the summons and the facts deponed in the affidavit of John Maina Muriithi. The applicant herein had filed an action by way of an originating summons dated 9th March 2007 in which he applied under S. 38 of Limitation of Actions Act to be declared to have acquired by adverse possession the parcel of land known as L.R. Iriaini/Gatundu/143. Judgment was given as prayed on 26th February 2009. The applicant has now extracted the decree for purposes of registration. The applicant has been unable to register the decree because the original title has not been surrendered to the Land Registrar, Nyeri. It is a requirement that a copy of the title should be surrendered to court before a judgment affecting title to land or part thereof is pronounced. It would appear that requirement i.e. order XX rule 5A of the Civil Procedure Rules was not complied before judgment. The applicant has now been requested by the Land Registrar to present the original title so that he can register the decree. I am satisfied that the applicant has given good reasons why he should be given the order. I am convinced the reasons given are genuine. Consequently the summons dated 5th October 2009 has merit. It is allowed as prayed.

Dated and delivered this 26th day of February 2010.

J.K. SERGON
JUDGE

In open court in the presence of Mr. King'ori for the applicant. N/A for Respondent.