



REPUBLIC OF KENYA



KENYA LAW
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**Kirongi v Maina & 3 others (Environment & Land Case 128 of 2013)
[2022] KEELC 4858 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4858 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 128 OF 2013
FM NJOROGE, J
SEPTEMBER 22, 2022**

BETWEEN

ELIZABETH MUTHONI KIRONGI PLAINTIFF

AND

JOHN KARIUKI MAINA 1ST DEFENDANT

DAVID NDERITU MUCHEMI 2ND DEFENDANT

NAKURU LAND REGISTRAR 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. The plaintiff filed a notice of motion dated 19/5/2022 on 26/5/2022 seeking the following orders:
 1. (spent.)
 2. That the honourable court be pleased to order the 1st respondent to sign the transfer documents in favour of the applicant and in default the Registrar of the High Court to sign the said document in place of the 1st respondent John Kariuki Maina.
 3. That cost of this application be provided for.
2. The application is premised on the fact that a judgment was issued on 30/4/2020 in the instant suit. The plaintiff and the 1st defendant are husband and wife. The plaintiff averred in the suit that jointly with the 1st defendant, they purchased the parcel of land known as Bahati/Kabatini block 1/11905 (the suit property), constructed a matrimonial home on it and that they resided thereon together with their children and agreed as a family that it be registered in the name of the 1st defendant. She further stated that she invested her money and resources in the suit property and that the 1st defendant left the matrimonial home on February 15, 2011. That he later appeared in the village on April 5, 2012



and said that the plaintiff should find an alternative residence since he had sold the suit property. She further stated that a search at the land registry confirmed that the 2nd defendant became the registered owner of the suit property on March 21, 2012.

3. The court in its judgment gave the following orders:
 - i. The 2nd defendant's counterclaim is dismissed with costs to the plaintiff.
 - ii. A permanent injunction is granted restraining the 1st and 2nd defendants from interfering with the plaintiff's quiet possession of the parcel of land known as Bahati/Kabatini Block 1/11905.
 - iii. The registration of the 2nd defendant as proprietor of the parcel of land known as Bahati/Kabatini Block 1/11905 is hereby cancelled.
 - iv. The Land Registrar Nakuru is hereby ordered to issue a title deed for the parcel of land known as Bahati/Kabatini Block 1/11905 in the joint names of the plaintiff and the 1st defendant.
 - v. Costs of the suit are awarded to the plaintiff and shall be paid jointly and severally by the 1st and 2nd defendants.
4. In the instant application the plaintiff, in whose favour the judgment was given seeks therefore to have the land registered in her name and the 1st defendant's name jointly so that order (iv) of the judgment above is met. She states that after the judgment was issued the 1st defendant frustrated her efforts to have the land registered jointly in both parties' names as ordered by the judgment hence the application.
5. I find the instant application an unnecessary one. The judgment clearly states at orders (iii) and (iv) what the Land Registrar ought to do. He ought to cancel the registration of the 2nd defendant and *in lieu* thereof register the plaintiff and the 1st defendant and joint owners. There is not a single clause that is ambiguous in those orders. The desire to have the 1st defendant execute the transfer forms in favour of the plaintiff is borne out of the erroneous belief that the land reverted to him entirely as proprietor after the court cancelled the 2nd defendant's title. That is not the case, for there is clear material that the intent of the suit and final judgment was not to have the land revert back to the 1st defendant, but to have the land registered jointly in the spouses names. The Land Registrar needs no other document save the order of the court to have the registration effected as ordered.
6. If the course the applicant has taken in this case was adopted in every case that comes before this court in which such ambiguous orders have been made, then much time may be wasted unnecessarily revisiting judgments. Neither the 1st defendant nor the Deputy Registrar needs take any further action in this matter. The power of the court to order the registration is sufficient to enable the Land Registrar, subject to the payment of the normal registration fees and title issuance fees, to effect the court orders, failure to which he may be held in contempt of a very clear order. This court has not been informed by the applicant, and therefore declines to speculate on the issue, whether the decree has been presented to the Registrar for registration to enable issuance of fresh registration and title *in lieu* of the 2nd defendant's cancelled registration.
7. Consequently, the application dated 19/5/2022 is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 22ND DAY OF SEPTEMBER, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

