



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mbito v Law (Environmental and Land Originating Summons  
20 of 2019) [2025] KEELC 3044 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3044 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 20 OF 2019**

**CK NZILI, J**

**APRIL 2, 2025**

**BETWEEN**

**MICHAEL MALING'A MBITO ..... PLAINTIFF**

**AND**

**FLORENCE KATHLEEN LAW ..... DEFENDANT**

**RULING**

1. The judgment in this matter was delivered on 6/12/2021, declaring the plaintiff entitled to 9 acres out of LR No. 11005 (IR No. 18979) by virtue of adverse possession. A decree to that effect was issued on 30/11/2023. The decree-holder has come back to court with an application dated 13/9/2024, seeking that the Deputy Registrar of this court to be authorized to execute all the subdivision and transfer documents and that the Chief Land Registrar or such other Registrar be authorized to dispense with the production of the original title deed for LR No. 11005 (IR No. 18979), to facilitate the said subdivision and transfer.
2. The application is supported by the grounds on the face of the application and a supporting affidavit of Michael Maling'a Mbitto, sworn on 13/9/2024. The applicant deposes that he has been unable to trace the original title deed for the suit land or the defendant, so that she may execute the relevant subdivision and transfer documents to facilitate the execution of the decree; hence, the orders sought.
3. The applicant deposes that contemporaneous with this suit was Kitale ELC No. 10 of 2016 (OS), in which Lois Chesiriken Psenjen claimed 16 acres out of the suit land, whose judgment was delivered on 13/2/2019 and a decree drawn thereafter; where the applicant had also been unable to trace the original title deed and the defendant. The applicant urges the court to grant orders, in this suit, to effect the said suit land.



4. Whereas the respondent was served with the application by way of newspaper extract pursuant to an order issued on 6/11/2024 and an affidavit of service sworn by Katama E. Ngeywa on 2/12/2024, no response was filed, objecting to the same.
5. Section 98 of the *Civil Procedure Act* provides that where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract, or other documents or to endorse any negotiable instrument, the court may, on such terms and conditions, order that the conveyance, contract or other documents shall be executed, or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose and the conveyance document or instrument so executed or endorsed, shall operate and be for all purposes available as it has been executed or endorsed by the person initially directed to execute or endorse it.
6. Execution of court decrees is a matter of procedure that the court uses to enforce its judgment or orders. Section 34 of the *Civil Procedure Act* provides that all questions arising between the parties to the suit in which the decree is passed and relating to the execution, discharge, and or satisfaction of the decree should be determined by the court executing the decree, and not by a separate suit.
7. To qualify under Section 98 of the *Civil Procedure Act*, an applicant must show and demonstrate the efforts that he has made in executing the decree and the inability he was facing, such that the only option left is to seek assistance from the court. In *Simon Pkite Chemoltor v William Loishakou* [2017] eKLR and *Fredrick Nyakagwa Osoro -v Hezron Mogere & Another* [2016] eKLR, the court held that where the judgment debtor has failed to execute such documents, the court may order the Deputy Registrar to do so.
8. In *William Juma Mbui -v Public Trustee & Another* [2019] eKLR, the court held that where the party to a suit had refused to surrender title documents regarding the transfer of the suit property, the court had the authority to order the Land Registrar to effect the transfer and register the same in the name of the judgment creditor in the absence of the original title deed or any other document.
9. In this application, there is no evidence of any efforts made by the decree-holder to trace the judgment debtor. There is nothing to show that the applicant has made efforts to prepare, trace, serve, or send the transfer documents to the decree-holder through her last known address or residence. In the absence of evidence to trace, locate, forward the transfer forms, serve the decree, or seek the surrender of the original title deed from the judgment debtor, the court finds no basis to grant the relief sought.
10. As to the issue of Kitale ELC No. 10 of 2016 (OS), there is no evidence that the deponent in this application has the authority to plead and swear on behalf of the decree holders in that suit. The decree holders must, therefore, move the court in the appropriate file, since the two files are not consolidated.
11. Needless to say, the decree, as extracted by the decree holders, has self-executing vesting orders as per relief No. (c) pursuant to paragraph 22 of the judgment. It is not clear why the applicant has not sought from the Land Registrar to be registered as the owner of the decreed land. The application is dismissed with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 2<sup>ND</sup> DAY OF APRIL 2025.**

In the presence of:

Court Assistant - Laban

Lichuma for Applicant present

Respondent absent.



**HON. C.K. NZILI**  
**JUDGE, ELC KITALE.**

