



REPUBLIC OF KENYA



KENYA LAW
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Muhiga v Land Registrar Nandi County (Environment & Land Miscellaneous Case E006 of 2022) [2022] KEELC 13762 (KLR) (25 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13762 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND MISCELLANEOUS CASE E006 OF 2022
MN MWANYALE, J
OCTOBER 25, 2022

BETWEEN

FELIX CHUMBA MUHIGA APPLICANT

AND

LAND REGISTRAR NANDI COUNTY RESPONDENT

RULING

1. By a Notice of Motion dated 16th August 2022, the Applicant seeks the following orders;
 1. Spent
 2. That the Land Registrar, Nandi County be and is hereby ordered to furnish copies of RL 17 and 19 forms and confirmation of Grant in Succession Cause No. 164 of 1996 with respect to land parcel number Nandi/kobarak "B"/487.
 3. That the cost of this application be in the cause.
2. The application is supported by an affidavit sworn by Felix Chumba Muhiga on 16th August 2022 in which he avers that upon conducting an official search, he learnt that the suit property belonging to his late father had been transferred to his mother one Helena Muranje Muhiga without his knowledge yet he had the original title deed in his possession.
3. He further avers that the Respondent advised him to obtain a Court order to enable them release the registration documents in relation to the suit property.
4. The Respondent on their part failed to respond to the instant application even after service.
5. On 5th September, 2022, the Court directed that the application be disposed off by way of written submissions.



6. The Applicant complied by filing submissions dated 22nd September 2022. Counsel submitted that the Respondent can be compelled to produce documents relied upon to establish whether the said documents are genuine or correct. To buttress this position, counsel for the Applicant relied in the case of *Anthony Ngari Kiuri vs Anthony Ngari Ileri & 6 others* (2020) eKLR where the Court allowed a similar application.
7. It was also submitted that the Applicant intended to re-open the succession proceedings hence the instant application.
8. This Court notes that even though the application has been heard unopposed, it is its duty and responsibility to deal with the application on merit.

Analysis and Determination: -

9. I have considered the application together with submissions by Counsel for the Applicant and find that the sole issue for determination is;

i. Whether the Applicant is entitled to the orders sought.

10. From the nature of the orders sought, it is apparent that the Applicant is seeking to exercise his Constitutional Right to Access to information provided under Article 35 of *the Constitution*.
11. Article 35 of *the Constitution* of Kenya provides that;
 1. every citizen has the right of access to –
 - a. Information held by the state; and
 - b. Information held by another person and required for the exercise or protection of any right or fundamental freedom.
 2. Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
 3. The state shall publish and publicize any important information affecting the nation.”
12. This provision of *the constitution* unmistakably provide that information in the custody of the state is accessible by citizens.
13. It therefore means that the Applicant, being a citizen, is entitled to information in the custody of the state.
14. Considering the fact that the Respondent never refuted the averments by the Applicant and the Constitutional Right to access information which the Applicant enjoys, this Court sees no reason to reject the Applicant’s request vide the orders sought.
15. Consequently, this Court orders the Land Registrar, Nandi County, to furnish copies of RL. 17 and 19 Forms as well as Confirmation of Grant in Succession Cause No. 164 of 1996 with respect to Land parcel number Nandi/kobarak “B”/487.
16. It is so ordered.

DATED AT KAPSABET THIS 25TH DAY OF OCTOBER, 2022.

DATED AT KAPSABET THIS 25TH DAY OF OCTOBER, 2022.



HON. JUSTICE M. N. MWANYALE

JUDGE

Delivered in the presence of;

Mr. Odongo for the Respondent

