



**Psenjen & another v Law (Enviromental and Land Originating Summons
10 of 2016) [2025] KEELC 3055 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3055 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 10 OF 2016**

CK NZILI, J

APRIL 2, 2025

BETWEEN

LOIS CHESIRIKEN PSENJEN 1ST PLAINTIFF

STEPHEN KIPLAGAT PSENJEN 2ND PLAINTIFF

AND

FLORENCE KATHLEEN LAW DEFENDANT

RULING

1. The applicants are seeking an order that the Deputy Registrar of this court execute documents to subdivide L.R No. 11005 I.R No.18979 into 16 acres and 9 acres, transfer the 16 acres to the applicants, and land registrar dispenses with the requirement of the surrender of the original title deed in executing the court decree. The basis of the application, as appearing on the face of the motion and in an affidavit sworn on even date by Stephen Kiplagat is that; the suit land measures approximately 25 acres; that in Kitale ELC Case No. 20 of 2019 (OS), Michael Maling'a Mbito had claimed 9 acres of thereof; that the respondent was served by way of substituted service with summons to enter appearance and since then, her whereabouts remain unknown. Again, the applicants aver that the court delivered its judgment on 13/2/20 and 6/12/2021, respectively, in the two suits.
2. The applicants aver that the respondent left the country 50 years ago and have been unable to trace her or the original title in order to execute the relevant documents to implement the decree of the court. Copies of the titled deed and the decrees are marked as annexures SKP "1 and 2".
3. When this application came up in court on 4/10/2024, the applicants were directed to serve the respondent with the application and the court's directions. In addition, parties were ordered to put in written submissions. Subsequently, on 22/10/2024, counsel for the applicants stated that he had not been able to trace the respondent to effect service. The court directed that the applicants advertise the directions in the Daily Nation newspaper.



4. In the affidavit of service sworn on 2/12/2024 by Mr. Katama advocate, he deposes that he caused to be served through a publication in the Daily Nation newspaper of 13/9/2024, at page 23; the notice of motion as well as the directions that had been issued, pursuant to the order dated 22/10/2024. In spite of the substituted service, the respondent has yet to file any documents in this matter.
5. In the judgment of this court delivered on 13/2/2019, the applicants were declared inter alia to have acquired ownership of 16 acres out of the suit land by way of adverse possession. The court subsequently ordered that they be registered as owners of the said portion. Consequently, a decree was extracted and issued on 30/11/2023.
6. Order 22 Rule 29 of the Civil Procedure Rules provides that where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.
7. 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 document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract document or instrument so executed or endorsed, shall operate and be for all purposes available as if it had been executed or endorsed by the person directed initially, to execute or endorse it.
8. A decree holder has to demonstrate the inability to execute a decree as all attempts and efforts to trace the respondent have been fruitless, thereby necessitating the filing of such an application. Further, Section 98 of the *Civil Procedure Act* can only be invoked where one has refused or neglected to comply with a decree, which is not the case in this application.
9. From the court record, the suit proceeded for formal proof since the defendant did not enter an appearance despite substituted service. This application has also been served on the respondent by way of substituted service and has elicited no response. In *Lamb & Sons Ltd v Rider* [1948] 2 All ER 402, the English Court of Appeal observed that execution is essentially a matter of procedure or machinery operated by the court but is subject to the rules in force for the purposes of enforcing its judgments or orders.
10. In this application, other than alleging that the respondent left the country 50 years ago and serving the application by way of substituted service, the applicants have not demonstrated what other steps they have taken regarding the execution of the decree in their quest to trace the whereabouts of the respondent, including; enquiring from her neighbors or members of her family or tracing her last known address.
11. In *Yahya Said Yahya v The Kenya Times Media Trust* [2008], eKLR, the court said that the inherent jurisdiction of the court is only tapped where no other means exist to access the reliefs sought and where if those reliefs are not accessed, there will be injustice or the process of the court would be in vain.
12. Looking at the affidavit in support, I am not convinced that the applicants have initiated any execution process by preparing the necessary documents and attempting to send them by whatever means to the respondent for execution in default, of which alternative means can be invoked through the assistance of this court. For instance, no recent official search certificate is attached to show that the respondent is still the registered owner of the land and her last known address. Similarly, no evidence has been availed to show that the transfer documents were taken to the land registrar, who declined to process them without the original title deed. It is also not clear if an application for a land control board consent for



either subdivision or transfer was prepared and sent to the respondent and or the Land Registrar for execution. The court declines to allow the application.

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

In the presence of:

Court Assistant - Laban

Lichuma for the plaintiff present

Respondent absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

