



**Cheruiyot & another v Mishack (Environment & Land Case
17 of 2022) [2022] KEELC 13485 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13485 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 17 OF 2022
MN MWANYALE, J
OCTOBER 12, 2022**

BETWEEN

JONATHAN CHERUIYOT 1ST PLAINTIFF

SAMUEL SANG CHERUIYOT 2ND PLAINTIFF

AND

ESTHER MISHACK DEFENDANT

RULING

1. Before the court for determination is the plaintiff/decree holder's application dated September 2, 2021 seeking orders in term that;
 - i. The honorable court be pleased to order the deputy registrar and/or executive officer to court administrator to execute the forms for application to the land control board for consent for transfer and transfer forms to cause the land parcel known as nandi/kamobo/510 be transferred from the registered owner on Esther Mishack to Jonathan Kiplagat Cheruiyot in compliance with the court judgement delivered on November 25, 2022 decree issued on February 1, 2021 and vesting order issued on April 9, 2021.
2. The application is premised on grounds *interalia*;
 - i. There is a judgment in favour of the plaintiff's/decree holders delivered on November 25, 2020.
 - ii. The honourable court made vesting orders on March 5, 2021 and issued on April 9, 2021 in favour of the plaintiff/decree holders/applicant
 - iii. The plaintiff/decree holders wrote to the defendant/judgment/debtor respondent to execute the transfer instruments to cause the land transferred in.
 - iv. The law requires that such an application be made to enable the fulfillment the decree herein.



3. The applicant has exhibited in his supporting affidavit, the judgment of the court as well as the decree thereof and the vesting order.
4. The judgment debtor filed a replying affidavit. In her affidavit she deponed that she was not with the vesting order as she would challenge the possession. She deponed further challenging the judgment for the court in view of supposed appeal in respect of the lands dispute appeals committee.
5. I have perused the application and the annexures thereto, the replying affidavit as well as submission on record. It is common ground that there is a judgment on record, which judgment has not been appealed from. The instant application seeks to enforce the said judgement in terms of the orders sought.
6. Execution of a judgment and/or a decree is guided by order 22 of the *Civil Procedure Rules* and is ordinarily handled by the deputy registrars. The applicant has found it difficult to execute the decreed and has sought the courts assistance. in its judgment the court decree 0.7 acres to the applicant, there would be no need of signing of the application for consent and transfer forms by the deputy registrar, as this is not a transfer by way of a purchase but by an implementation of a valid court decree which binds all the parties.
7. Whereas there is merit in the application before court, the court shall not issue the orders as prayed as prayer number 2 as drafted will have an effect of transferring the whole property while the decree was for 0.7 acres.
8. The application is thus allowed in terms that;
 - i. The county surveyor – Nandi county to effect the decree of the court by hiving 0.7 acres of Nandi/kamobo/510 and the county land registrar to register the resultant title in favour of Jonathan Cheruiyot as per the court decree dated February 1, 2021.
 - ii. The above terms of the order to be incorporated in the vesting order dated issued on April 9, 2021.
 - iii. Costs of the application to be awarded to the decree holders.
9. Orders accordingly.

DATED AND DELIVERED IN KAPSABET THIS 12TH DAY OF OCTOBER, 2022.

Hon. M. N. Mwanyale,

JUDGE

In the presence of;

Mrs. Chumba holding brief for Mr. Segoo for the Defendants

Mr. Kiboi for the Applicant.

