



REPUBLIC OF KENYA



KENYA LAW
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**M'rintari & another v Rintari (Environment & Land Case 35 of 2002)
[2022] KEELC 14779 (KLR) (16 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14779 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 35 OF 2002**

CK YANO, J

NOVEMBER 16, 2022

BETWEEN

JAMES NGARUTHI M'RINTARI 1ST PLAINTIFF

SILAS KIRIGIA RINTARI 2ND PLAINTIFF

AND

MUGUNA RINTARI DEFENDANT

RULING

1. By a notice of motion application dated September 19, 2022 brought pursuant to section 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 51 Rule 1 of the [Civil Procedure Rules](#), the 1st plaintiff/applicant has sought the following orders;
 1. That this matter be certified as urgent and service be dispensed with at first instance.
 2. That an order do issue to the Land Registrar Meru cancelling the subdivision emanating from land referenced Kibirichia/kibirichia/501.
 3. That an order do issue to the Land Registrar Meru removing inhibition over parcel numbers Kibirichia/kibirichia/3531 & Kibirichia/kibirichia/ 3532.
 4. That an order do issue to the Land Registrar Meru to dispense with the production of the title deed for Kibirichia/kibirichia/3531 & Kibirichia/kibirichia/3532.
 5. That the costs of this application be provided for.
2. The gist of the application is that on November 22, 2017, this Honourable court delivered a judgment in which the applicant's late father was awarded 7 acres to be excised from land referenced Kibirichia/kibirichia/501 and the defendant/respondent despite knowledge of the ongoing case and orders issued therein went ahead and subdivided the land into two portions to wit Kibirichia/kibirichia/ 3531 &



Kibirichia/kibirichia/3532 both under his names. The applicant contended that the subdivision was calculated to defeat the claim by her father as to the acreage that he would acquire and that if the orders sought herein are not granted, the applicant will suffer immensely as she will not be able to enjoy the fruits of her father's successful litigation.

3. The application is supported by the affidavit of Hellen Kinya Kibiti, the applicant sworn on September 19, 2022 in which she has annexed a copy of the grant of Letters of Administration Ad Litem issued on 6th July 2021, a copy of the decree dated November 22, 2017 and issued on July 20, 2022, a copy of an application dated March 7, 2003 and the ruling dated July 31, 2003, copies of the search certificates over the subdivided land, a copy of the green card and a copy of an order dated June 23, 2022 requesting for security.
4. The advocates for the respondents were duly served with the application on September 22, 2022 but they did not file any response nor attend court during the hearing. The application is therefore not opposed.
5. I have carefully considered the application. It is not in dispute that upon the determination of the instant suit, the court (L.n Mbugua J) found in favour of the plaintiff who is now deceased and who has since been substituted with the applicant herein. In the judgment dated and delivered on November 22, 2017, the court concluded that the plaintiff was entitled to 7 acres that he was claiming and ordered as follows-;
 1. It is hereby declared that the plaintiff is entitled to 7 acres of land from Parcel No. Kibirichia/kibirichia/501.
 2. An order is hereby issued for the transfer of 7 acres of land to the plaintiff from parcel No. Kibirichia/kibirichia/501.
 3. As to costs, I have taken into account that the litigants are close family members, as such I direct that each party bears their own costs of the suit, though defendant is still entitled to half costs as earlier ordered against the legal representatives of the plaintiff who died.
6. A decree was subsequently issued in terms of the above orders. The applicant has now filed the instant application arguing that the defendant despite knowledge of the ongoing case and orders issued therein went ahead and subdivided the land into two parcels Kibirichia/kibirichia/3531 and Kibirichia/kibirichia/3532 both under his names.
7. Having perused the pleadings and the documents filed in this suit, it is not in dispute that the original suit land was Kibirichia/kibirichia/501 before it was subdivided into parcel Nos. Kibirichia/kibirichia/3531 and Kibirichia/kibirichia/3532 and both titles are under the name of the defendant. In this case, the suit was determined in favour of the applicant and a decree issued to that effect. The orders sought in the instant application are meant to give effect to the judgment of the court delivered on November 22, 2017. There is no evidence that the said judgment has been set aside or reviewed. It is a principle tenet of law that court orders should not be issued in vain as that would be tantamount to an abuse of the court process. I see no prejudice that the respondent will suffer if the orders sought by the applicant are granted. To the contrary, the applicant will be left with a worthless judgment which she cannot execute if the orders sought are not granted. Moreover, the respondent has not opposed the instant application despite being duly served. From the circumstances and in the interest of justice, it is only fair and equitable that the orders sought are granted.
8. For the foregoing reasons, I find the application dated September 19, 2022 to be meritorious and I allow the same in terms of prayers 2, 3 and 4 thereof.



9. As to costs, I take into account that the application is not opposed and the litigants are close family members. As such I direct that each party bears their own costs of the application.
10. It is so ordered.

DATED SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF NOVEMBER, 2022.

In the presence of

C.A Mwenda.

Karanja for plaintiffs/applicants

No appearance for Kaumbi for defendant/respondent

C.K YANO

ELC JUDGE

