

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Civil Case 7 of 1986

NATHAN IFEDHA

OBERIPLAINTIFF

V E R S U S

ELKANA ANAYA

OBERIDEFENDANT

R U L I N G

The application herein shows that the elders award dated 22-11-88 was endorsed as a judgment of the court and the extracted decree shows that land title No. *S.Maragoli/Logovo/149* was ordered to be divided into two portions of 1.25 acres and 2.75 acres to be transferred to the plaintiff *Nathan Ifedha Oberi* and the defendant, *Elkana Anaya Oberi* respectively.

In his application dated 7/2/00, the Plaintiff alleges that the Defendant has refused to transfer the 1.25 acres to him and prays that the Deputy Registrar of this court be authorized to execute the documents of transfer in place or on behalf of the Defendant.

The affidavit of the plaintiff sworn on 7-2-2000 in support of the application averred that the defendant had failed to transfer to him 1.25 acres comprised in title *No.S.Maragoli/Logovo/149* and instead was intent on transferring the entire land comprised in *S.Maragoli/Logovo/149* to his (Defendant's) daughter one *Jane Kadesa Libwege*.

In his replying affidavit sworn on 13-3-2000, the defendant averred that he was not the proprietor of the land known as *S.Maragoli/Logovo/149* and as such was not capable of transferring the 1.25 acres comprised in that title to the Plaintiff. The copy of extract of title to the said land No. *S.Maragoli/Logovo/149 (now Kakamega/Logovo/149)* shows that the Defendant was registered as the proprietor of the said land on 06-05-1980 and that on 7-10-1998 he transferred as a gift the said land to *Jane Kadesa Libwege* who is said to be his daughter. This was after the award of the elders dated 22-11-88 was adopted as a judgment of the court on 16-12-92. The application herein was made on 17-2-2000. The said *Jane Kadesa Libwege* has not been joined as a party although she now holds the title to the said land nor has the applicant moved the court for the cancellation of the transfer of the said land by the defendant to his daughter. In the circumstances, it is not possible for the court to grant the order sought. Mr. Nyanga, the learned counsel for the plaintiff urged the court on 30-5-2006 to grant the application but he obviously had not perused the extract of the title to the said land which was annexed to the affidavit of his client and was marked No.1.

Mr. Musiega, learned counsel for the defendant on his part told the court in opposition to the application that it had not been shown that the defendant had refused to execute the transfer documents! That cannot be a serious submission. He did not allude to the fact that his client had acted in a manner that was clearly designed to defeat the decision of the court! His other point was that the decree was about 14 years old and that there was no Notice to show cause.

Even without addressing the issue of the age of the decree, the status of the registration of the land having changed as aforesaid, the order sought cannot be granted. The application fails. It is dismissed with no order as to costs. No doubt the applicant will seek proper legal advise on how to seek redress.

Dated, signed and delivered at Kakamega this 13th day of July, 2006.

G. B. M. KARIUKI

J U D G E