



Kitur & another v Land Registrar, Nandi County (Environment & Land Case 100 of 2021) [2025] KEELC 1034 (KLR) (4 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1034 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 100 OF 2021
GMA ONGONDO, J
MARCH 4, 2025**

BETWEEN

PHILIP KIPROP KITUR 1ST PLAINTIFF

CHERUIYOT KITUR 2ND PLAINTIFF

AND

LAND REGISTRAR, NANDI COUNTY DEFENDANT

RULING

1. By an Ex Parte Notice of Motion dated 13th October 2023 under, inter alia, section 1A, 1B, 3 and 3B of the Civil Procedure Act Chapter 21 Laws of Kenya, the plaintiff/applicants through Duncan Tallam and Company Advocates are seeking the following orders;
 - a. Spent.
 - b. That , the County Surveyor, Nandi County be ordered and directed to survey so as to sub-divide parcel Nandi/mutwot/210 into three (3) portion of 16 Ares, 13.5 Acres and 10 Acres for transmission to Philip Kiprop Kitur, Kitur Arap Misoi (now Deceased) And Cheruiyot Kitur respectively.
 - c. That an Order do issue directing OCS, Mosoriot Police Station within whose area of jurisdiction the suit land is situate to provide security during the survey and sub-division of the land and affirm the Applicants possession and occupation during the exercise
 - d. Costs of this application be provided for.
2. The applicants assert that the court adopted a consent on 15th November 2021 by the parties as a valid court order. That there is no appeal and no application for stay is pending against the order to be executed in the interest of justice.



3. The defendant/respondent was duly served with the application as revealed in the affidavit of service sworn on 3rd March 2025 herein.
4. There is no response to the application.
5. So, is the instant application meritorious?
6. The applicants intend to have the consent order executed as disclosed in the application. Section 34 of the Civil Procedure Act Chapter 21 Laws of Kenya relates to questions to be determined by court in execution of a decree.
7. The applicants have a vested right to the consent order which ought to be effectual; see also *Shahmad-vs-Shamji Bros and another* (1957) EA 438.
8. In the instant case, the consent order has neither been varied nor set aside.
9. By the consent order and in the interest of justice, the applicants are entitled to the principal prayers in the application.
10. Accordingly, the application is hereby allowed in terms of orders 2 and 3 sought therein as set out in paragraph 1 (b) and (c) hereinabove.
11. Costs of the application be in the cause.
12. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 4TH DAY OF MARCH 2025.

G M A ONGONDO

JUDGE

PRESENT

Ms Tonui instructed by Mr Duncan Tallam learned counsel for the applicants/plaintiffs

Walter, court assistant

