



**M'arimi v Naito (Sued as the Legal Representative of the Estate of  
Lawrence Ikunda M'arimi Deceased) (Environment and Land Appeal  
21 of 2020) [2024] KEELC 1262 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1262 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL 21 OF 2020  
CK NZILI, J  
MARCH 6, 2024**

**BETWEEN**

**MICHAEL MPURIA M'ARIMI ..... APPELLANT**

**AND**

**CECILIA NAITO (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE  
OF LAWRENCE IKUNDA M'ARIMI DECEASED) ..... RESPONDENT**

**RULING**

1. By an application dated 9.12.2023, the court is asked to direct the Deputy Registrar of this court to sign mutation forms and all other transfer documents to facilitate subdivision and transfers of 0.545 ha out of L.R No. Nkuene/Ng'onnyi/22, following a decree dated 23.5.2023 and for the OCS Meru police station to provide security during the subdivision of the suit land.
2. The reasons are contained on the face of the application and in the supporting affidavit sworn by Michael Mpuria M'Arimi on 9.11.2023. Briefly, the applicant says the respondent has refused to cooperate in the execution of the decree dated 23.5.2023, following his successful appeal. The application was served upon the respondent on 22.11.2023. An affidavit of service was filed on 23.11.2023, sworn by Muthomi Njeru Advocate.
3. It is not in dispute that the appeal was allowed on 13.7.2022. The effect was that the suit at the lower court was allowed in terms of the appellant being entitled to a half share of the L.R No. Nkuene/Ngonyi/22, a permanent injunction was to issue excision, was to be done for the half share and the same to be transferred to the appellant.
4. There is no evidence attached to the application that the decree was served upon, and the respondent was notified to comply with it. No documents have been attached to the affidavit in support showing that an application for the land control board consent was prepared and served to the respondent



seeking her signature and or attendance for the subdivision or excision of the half share by the county land surveyor or registrar.

5. It is trite law that once an appeal is determined, the lower court file is returned for execution in the lower court. To this end, the applicant is seeking this court to enforce the execution of its decree. That falls under the file in the primary suit. The court is already functus officio in so far as the issue of execution is concerned. The appellant, in the memorandum of appeal before this court, did not seek such a relief. He cannot seek for such without a specific application for review or further orders. See *Michael Bartenge v Stephen Bartenge* (2007) eKLR.
6. The upshot is that I find the application filed before the wrong court. It lacks merits. The same is dismissed with no order as to costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 6<sup>th</sup> DAY OF MARCH, 2024**

In presence of

C.A Kananu

No appearance

**HON. CK NZILI**

**JUDGE**

