



REPUBLIC OF KENYA



KENYA LAW
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**Okaka v Menya (Environment & Land Case 5 of 2015)
[2023] KEELC 15959 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 15959 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 5 OF 2015**

E ASATI, J

MARCH 2, 2023

BETWEEN

MATHLIDA ODAGO OKAKA APPLICANT

AND

ISAACA ANUKO MENYA RESPONDENT

RULING

1. Vide the Notice of Motion application dated August 30, 2022, the Plaintiff/Applicant seeks for orders that; -
 - a. The Respondent be ordered to sign all relevant papers and give effect to the decree issued on May 6, 2022 to enable the transfer of land title No Kisumu/Katiemo/1846 measuring 83m long by 25 meters to the Applicant herein.
 - b. That in default of complying with prayer 1, the Deputy Registrar of the court to execute transfer instruments in respect of the land parcel known as LR No Kisumu/Katiemo/1846 measuring 83m by 25 metres in favour of the Plaintiff as per the decree issued on May 6, 2022.
 - c. That costs of the application be provided for.
2. The application was stated to be brought pursuant to the provisions of Section 98, 1A, 3 and 3A of the *Civil Procedure Act* and Order 51 of the *Civil Procedure Rules*. The same was based on the grounds that the Applicant obtained judgement against the Respondent on May 6, 2022 and a decree was issued on July 6, 2022 and that the judgement has not been appealed against. That efforts by the Applicant to have the Respondent transfer the suit land to the Applicant have not been successful. The application was supported by the averments contained in the Supporting Affidavit sworn by the Applicant on August 30, 2022 and the annexure thereto.



3. The application was unopposed. Affidavit of service sworn by Gilbert Otieno Misula on September 28, 2022 shows that the Respondent's Advocates were served with the Notice of Motion Application and Mention Notice dated September 7, 2022 on September 7, 2022. Another Affidavit of service sworn by Gilbert Otieno Misula on November 21, 2022 shows that the Respondent's Advocates were served with Mention Notice dated November 21, 2022 for mention of the matter on February 1, 2023 and finally Affidavit of service sworn on February 2, 2023 shows that the Respondent's Advocates were served with hearing notice dated February 1, 2023 for hearing of the matter on February 21, 2023. There was no response to the application.
4. I have considered the application, the laws under which it is brought and all the circumstances of the case and have perused the judgement that is sought to be executed. The judgement was delivered on 6/5/2022. It is not appealed against. The Judgement ordered, *inter alia*, for the transfer of a portion of land measuring 83m by 25m out of the suit land to the applicant. In order for this to happen, the Defendant needs to execute instruments of transfer. The plaintiff avers that efforts to have the Defendant execute the said instruments have been futile. Section 98 of the [Civil Procedure Act](#) under which the application is brought empowers the court to execute instruments where the party who ought to execute the instruments neglects to do so.
3. I find that the application has merit and allow it as follows: -
 - i. The Respondent is hereby ordered to execute all necessary instruments of transfer in favour of the applicant for transfer of the portion of land measuring 83 m by 25 m out of the suit land parcel No Kisumu/Katieno/1846 forthwith, in default the Deputy Registrar of the court to execute the instruments.
 - ii. Costs to the applicant.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, DELIVERED VIRTUALLY THIS 2ND DAY OF MARCH, 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Miss Ochieng Advocate holding brief for Nyanga for the Applicant

No appearance for the Respondent

