



**Wang’ombe & another v Mugwara & another (Environment & Land
Case 163 of 2014) [2023] KEELC 16182 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16182 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 163 OF 2014**

**JO OLOLA, J
MARCH 9, 2023**

BETWEEN

CHARLES KIHUMBA WANG’OMBE 1ST PLAINTIFF

PETER WACHIRA WANG’OMBE 2ND PLAINTIFF

AND

PATRICK IHIGA MUGWARA 1ST DEFENDANT

DAVID GACHAGI WANG’OMBE 2ND DEFENDANT

RULING

1. By the Notice of Motion dated and filed herein on May 12, 2021, David Gachangi Wang’ombe (the 2nd Defendant) prays for orders:
 1. That this Honourable Court be pleased to authorize the Deputy Registrar to sign all the relevant documents necessary on behalf of the Respondents in respect of the property namely Title No Thegenge/Karia/3683, to enable the Applicants to give effect to the decree issued on July 13, 2015;
 2. That the Nyeri District Land Registrar be directed to dispense with the production of the Respondent’s passport size photographs, Pin certificate or their identity cards while registering the transfer in respect of Title No Thegenge/Karia/3685; and
 3. That the costs of this application be provided for.
2. The application which is supported by an Affidavit sworn by the 2nd Defendant/Applicant is premised on the grounds that:
 - (a) The 1st Defendant is the registered owner of Title No Thegenge/Karia/3683;
 - (b) The 2nd Defendant is a beneficiary of Title No Thegenge/Karia/3685;



- (c) By a decree issued by this Court on July 13, 2015, the Court ordered the rectification of the 1st Defendant's said title to show that he is entitled to no more than ¼ acre;
 - (d) The 1st Defendant has obtained a consent to sub-divide Title No Thegenge/Karia/3683 from the Nyeri Central Land Control Board in order to give effect to the decree;
 - (e) The 1st Defendant has declined to sign all the relevant documents necessary to transfer Title No Thegenge/Karia/3683 to the intended beneficiaries in order to give effect to the beneficiaries; and
 - (f) It is therefore in the best interest of justice that this application be allowed.
3. Peter Wachira Wang'ombe – the 2nd Plaintiff, is opposed to the application. In his Replying Affidavit filed herein on June 25, 2021, the 2nd Plaintiff accuses the Defendants of complicating the matter by this application after they refused to pay the sum of Kshs 100,000/- which was assessed as the Plaintiff's costs.
4. The 2nd Plaintiff avers that even though the 1st Defendant was indeed ordered to get ¼ acre of the land, they were to involve the Plaintiffs in so doing which they are yet to do. The 2nd Plaintiff accordingly urges the Court to reject the application and to refer the matter to the Land Registrar to cancel the old title deeds and issue fresh titles to the Parties.
5. I have carefully perused and considered the application by the 2nd Defendant as well as the response thereto by the 2nd Plaintiff. I have similarly perused and considered the written submissions placed before me by the Learned Advocates representing the Parties.
6. By this application the 2nd Defendant has urged the Court to be pleased to direct the Deputy Registrar of this Court to execute all relevant documents in respect of the transfer of portions of LR No Thegenge/Karia/3683 to enable the Parties to give effect to the decree issued herein on July 13, 2015. The 2nd Defendant also urges the Court to direct the Nyeri District Land Registrar to dispense with the production of a number of documents and to proceed to register the transfer as per the decree.
7. The 2nd Plaintiff is opposed to the application essentially on the ground that the Defendants have not involved them in whatever they are doing and in particular that the Defendants have failed to pay their costs as taxed.
8. From the material placed before me, it was apparent that Judgment was delivered in this matter on July 13, 2015 and that a decree was subsequently extracted herein on August 11, 2015. By the said decree, the Court ordered that:
- (a) The Defendants to jointly and severally pay the Plaintiffs Kshs 100,000/- being general damages for trespass;
 - (b) There be rectification of the 1st Defendant's land to show that he is entitled to no more than ¼ acre;
 - (c) The Plaintiffs to be registered together with the 2nd Defendant as proprietors of land parcel Thegenge/Karia/3685 and Laikipia/Nanyuki/Kimura Block III/Sweet Waters/522; and
 - (d) Costs of the suit to the Plaintiff.
9. Arising from the 2nd Defendant's application, it was apparent that some six (6) years since the Judgment, the boundaries of the suit properties were yet to be adjusted accordingly thereby prompting



this application. According to the 2nd Defendant; it was the 1st Defendant and the Plaintiffs who had failed to execute the necessary documents to enable the process to move forward.

10. In his response to the application, the 2nd Plaintiff does not deny that they have refused to execute the transfer documents. They instead complain that their appeal filed against the Judgment was dismissed and that their bill of costs was equally dismissed because they are not conversant with the law.
11. As it were, Section 98 of the [Civil Procedure Act](#) provides as follows:

“Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other documents, or to endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as it may determine order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it has been executed or endorsed by the person originally directed to execute or endorse it.”

12. In the circumstances herein I am satisfied that this is a proper case in which the Court should exercise its discretion under Section 98 of the [Civil Procedure Act](#) and do hereby nominate the Deputy Registrar of this Court to execute the instruments of transfer in favour of the 2nd Defendant to enable him enjoy the fruits of the Judgment delivered herein on July 13, 2015.
13. Accordingly I hereby allow the Motion dated May 12, 2021 in terms of Prayers 1 and 2 thereof. I make no order as to costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 9TH DAY OF MARCH, 2023.**

In the presence of:

Ms Kimani for Magua for 2nd Defendant/Applicant

Ms Maina for the Plaintiffs

No appearance for Nderi for the 1st Defendant

Court assistant - Kendi

J. O. Olola

JUDGE

