



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 127 OF 2017**

**(FORMERLY NAIROBI HCCC NO. 290 OF 2002)**

**JEREMIAH MATOKE.....PLAINTIFF**

**VERSUS**

**KENYA COMMERCIAL BANK LTD.....1<sup>ST</sup> DEFENDANT**

**WILLIAM WILHITE AYENDA.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The background to the instant application is that the applicant being a defendant in the suit was sued by the plaintiff who had purchased from him some 10 acres of land which had not been transferred to him as per the agreement.

2. The 2<sup>nd</sup> defendant filed no defence and sat through the proceedings and did not volunteer to participate in the hearing. All the evidence regarding the transaction came from the plaintiff and the 1<sup>st</sup> defendant. The plaintiff obtained the following orders in the judgment:

**(a) An order of permanent injunction restraining the 2<sup>nd</sup> defendant from disposing of the land comprised in LR Number 7847/7 as shown on Survey Deed Plan Number 238375;**

**(b) An order of specific performance directed to the 2<sup>nd</sup> defendant compelling him to register the partial discharge or full discharge as may have been supplied by the 1<sup>st</sup> defendant, against the land known as LR No 7847/4 and thereafter to execute and register all necessary documents required to transfer title over LR Number 7847/7 to the plaintiff within 3 months of this order and in default the Deputy Registrar of this court do obtain and/or execute all such documents needed to effect such final transfer of LR Number 7847/7 to the plaintiff.**

**(c) Each of the defendants shall half of the total taxed costs of this suit.”**

3. The application dated 26/2/2021 and filed in court on the same date has been bought under **Sections 1A, 1B, 3A & 63(e)** of the **Civil Procedure Act, Order 45 Rule 1** and **2** and **Order 51 Rule 1** of the **Civil Procedure Rules**. The 2<sup>nd</sup> defendant/applicant seeks the following orders:-

**(1) ...spent**

**The court pleased to review or set aside the order made on 8/5/2019 to the extent that the implementation of order made in the this court’s judgment dated 15/11/2018 shall precede all other attempts to implement the decree in Kitale SPMC Land Case No. 50 of 2012.**

**(3) The time made in the judgment and decree of the court issued on 15/11/2018 be enlarged and extended accordingly.**

**(4) The court (sic) surveyor Trans-Nzoia be mandated to implement the decree in Kitale Land Case No. 50 of 2002 (sic) contemporaneously will the judgment and decree issued on 15/11/2018 so as to give effect to the said decree.**

**(5) Any shortfall in acreage arising from the implementation by the surveyor reported to this court for further direction**

**(6) Costs be provided for.**

4. The application is supported by the affidavit of the applicant sworn on **26/2/2021**.

5. I find that the applicant has not complied with the order of this court dated **26/2/2021**, to the effect that he ought to file an affidavit of service and written submissions on the application. This court is not therefore in a position to determine if the application has been served or not, and can not also speculate on the reasons for absence of a response from the other side. From the history of the 2<sup>nd</sup> defendant's conduct in the transaction, I consider this as a further attempt to vex the plaintiff and delay the execution of the judgment at the 2<sup>nd</sup> defendant's pleasure.

6. There having been no other means of disposal of the application ordered by this court save by way of written submissions, I deem the application to be unprosecuted. I hereby dismiss the application dated **26/2/2021** with costs for want of prosecution.

**Dated, signed and delivered at Kitale via electronic mail on this 21<sup>st</sup> day of April, 2021.**

**MWANGI NJOROGI**

**JUDGE, ELC, KITALE.**