



**Karemeri & 11 others v Devji & another (Environment & Land
Case 6 of 2020) [2023] KEELC 17147 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17147 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 6 OF 2020**

FM NJOROGE, J

MAY 4, 2023

BETWEEN

SAMMY NGUGI KAREMERI 1ST PLAINTIFF
JOSEPH KAREMI MUGITU 2ND PLAINTIFF
CHRISTOPHER AHURA MUSINZI 3RD PLAINTIFF
DAVID MUTURI MUHORERI 4TH PLAINTIFF
GEOFFREY MUHURI KAMAU 5TH PLAINTIFF
MARIA NJERI KIMOTHO 6TH PLAINTIFF
LUCY NJERI KAMAU 7TH PLAINTIFF
MARY NJERI MUIGAI 8TH PLAINTIFF
SUSAN WANJIRU NGARI 9TH PLAINTIFF
SARAH NYOKABI KAMAU 10TH PLAINTIFF
JOSEPH KIMATHI KAMAU 11TH PLAINTIFF
ANNA WARENGA NDUATI 12TH PLAINTIFF

AND

KANJI DEVJI 1ST DEFENDANT
JHAVERCHAND MORARJI 2ND DEFENDANT

RULING

1. This ruling is in respect of the plaintiffs Notice of Motion application dated 6/03/2023 which is expressed to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Section 31 of the



Land Registration Act, Section 3 and 14 of the Environment and Land Court Act and which seeks the following orders:

- a. Spent
 - b. That the Land Registrar, Nairobi be directed to dispense with the production of the original Certificate of Lease/Title in respect of Njoro Township 519/7/XXV original grant I.R 1677 (the suit property) in effecting the transfer of lease to the applicants herein as proprietors under the supervision of the court.
 - c. That this honorable court do direct the Land Registrar, Nairobi to issue the plaintiffs/applicants with a fresh certificate of lease showing the plaintiffs as proprietors of the suit property.
 - d. That any other orders as may seem fair and just.
 - e. That the costs of this application be borne by the respondents.
2. The application is supported by the supporting affidavit of Sammy Ngugi Karemeri sworn on 6/03/2023. The grounds on the face of the application and the supporting affidavit are that judgement in this matter was delivered in the applicant's favour on 7/10/2021 and they extracted the decree and instructed their advocates to register it in the parcel file as they commenced the transfer process; that the Land Registrar declined to register the decree in the parcel file while giving the reason that there was a discrepancy as the decree was issued in Nakuru while the judgment was delivered in Kakamega; that their advocates wrote a letter to the Land Registrar clarifying the discrepancy but the Land Registrar declined to register the decree; that they filed an application to have the Land Registrar cited for contempt; that the Land Registrar was summoned to court and he stated that failure to comply with the orders was caused by lack of original certificates of title whereas the same are normally submitted before issuance of new certificates of lease to avoid a multiplicity of certificates of titles to land; that the court directed that the plaintiffs file a formal application to dispense with the production of the original certificates of title; that they stand to suffer prejudice if the application is disallowed as the suit property is held under a leasehold tenure which is bound to expire on 01/01/2025 and that it is in the interest of justice that the application be allowed.
3. The defendants did not file any response to the plaintiffs' application.
4. No submissions were filed by either of the parties.

Analysis and Determination

5. After considering the application dated 6/02/2023, the only issue that arises for determination is whether the plaintiffs are entitled to the orders sought.
6. The plaintiffs are seeking that the court directs the Land Registrar to dispense with the production of the original certificate of lease/title in respect of Njoro Township 519/7/XXV original grant I.R 1677. The plaintiffs are also seeking orders to direct the Land Registrar to issue them with a fresh certificate of lease showing them as proprietors of the suit property.
7. As noted before, the grounds upon which the plaintiffs are seeking the said orders are that the Land Registrar has declined to register the decree for grounds stated. The plaintiffs state that they filed an application citing him for contempt and when it came up for hearing, the Land Registrar appeared in court and indicated that he was not able to comply with the court orders because the original certificates of title was not submitted. The plaintiffs further allege that the court directed them to file a formal application to dispense with the production of the original certificates of lease.



8. A perusal of the court record indeed indicates that judgement in this matter was delivered on 07/10/2021. It also indicates that an application dated 18/10/2022 was filed on 08/11/2022 which sought that the Land Registrar Nairobi be held in contempt for failing to register the decree. The said application came up for hearing on 09/11/2022 when the court directed that the application be served upon the respondents. The matter was subsequently mentioned on 8/12/2022 and 9/02/2022. On 9/02/2022, counsel for the plaintiffs informed the court they had been in touch with the Land Registrar and that he was in the process of complying with the said orders. The application dated 18/10/2022 was still pending for determination when the plaintiffs filed the application dated 6/03/2023 that is under consideration in this ruling.
9. It is clear from the court record that the Land Registrar did not appear in court as alleged and nothing has been availed to show that the Land Registrar failed to comply with the decree of this court because of the plaintiffs' failure to produce the original certificate of lease of the suit property.
10. Nonetheless, Section 31 of the [Land Registration Act](#) provides as follows:
 - (1) If a certificate of title or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and, if the certificate of title or the certificate of lease shows all subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate of lease.
 - (2) Where the disposition is a transfer, the certificate shall, when produced, be cancelled, and in that case a new certificate may be issued to the new proprietor.
 - (3) Where the disposition is a charge, the certificate shall be delivered to the chargee.
11. Case law on the subject of dispensing with the production of title is not rare. In the case of [John Chege Mbatia v Harbir Singh Rooprai & 2 others](#) [2021] eKLR the Hon Justice Mbugua relied on two cases on the issue, that is [Re Estate of Phillip Kiogo Tunga \(Deceased\)](#) [2020] eKLR and the case of [Charles Ntiritu M'Ikunyua & 3 others v Stephen Robert Gitonga Njagi](#) [2021] eKLR. In the first case it was held that though production of the original title deed is the general requirement in registration of transfer of land, Land Registrars have consistently failed to exercise discretion provided in law to dispense with production of original title deed in appropriate cases. The court went on to hold that that the Land Registrar has power to dispense with the production of the original title and that there is no requirement that exercise of the power is dependent upon a Court order to do so.
12. In the [Charles Ntiritu case](#) (*supra*), the court observed that where a party desires the exercise of the Land Registrar's discretion in its favour the correct procedure is to request the Land Registrar in writing citing reasons for why they ought to be allowed not to produce the original title deed; perchance the Registrar refuses to exercise that discretion only then should the requesting party move to court if aggrieved by the Registrar's decision. It was also observed in that case that where the transfer is subject to a court order, such as in the present case relating to adverse possession, a second court order to dispense with production of the original title deed is not necessary.
13. In this matter, as in the [John Chege Mbatia case](#) (*supra*), the applicants have not produced any evidence to show that they have sought to be excused from the requirement to produce the original certificate of lease in order for the land to be registered in their favour; also, no evidence has been adduced to demonstrate the Land Registrar's refusal to dispense with the production of the original certificate of lease of the suit land. The registration form annexed to the application under consideration indicates that the decree was not registered because it was issued in Nakuru while the judgement was delivered



in Kakamega. There is also annexed a letter dated 17/06/2022 written by counsel for the plaintiffs explaining the alleged discrepancy.

14. In the case of *Kenya Commercial Bank Ltd v Alcon Holdings Limited* [2021] eKLR the court (S. Okongo J.) held as follows:

“Section 31(1) of the *Act* allows the Land Registrar to dispense with the production of a certificate of title to land or lease during the registration of any dealing with the land or lease. The application for such dispensation should be made to the Land Registrar who shall determine whether to allow it or not. The court can intervene in the matter under Section 86(1) of the *Act* in case a party is aggrieved by the decision of the Land Registrar on the issue. There is no evidence before me that an application for dispensation with the production of the certificate of title for the suit property had been made to the Land Registrar. This court cannot order the Land Registrar to dispense with the production of the said certificate of title in the absence of evidence that an application for such dispensation has been made to the Land Registrar and the Land Registrar has unreasonably refused to dispense with the production of the same. Furthermore, the court can only intervene when moved to exercise its review jurisdiction under section 86(1) of the *Act* aforesaid.”

15. Be that as it may this court notes that quite often citizens may be sent away from public offices without services having been rendered to them as sought, or unnecessary burthens and costs, such as the application herein, may be foisted upon their shoulders by service providers out of lack of awareness of the legal scope of their power to act to solve the problem at hand. Public offices are there to serve the public in all ways that will satisfy their desires in a legal manner and it cannot be understood why the Land Registrar would not even advise the lodging of a written request for dispensation with his office by the applicants so that he may accede to the same or decline and give reasons so as to pave the way for a review under Section 86(1) of the *Act*. It is therefore just that this court considers the plight of the present applicants, who may go back to the same office to seek dispensation with the production of the certificate of lease, and alleviate it somehow.
16. Consequently, in the interest of justice this court hereby orders that the Land Registrar, Nairobi dispenses with the requirement as to the production of the original certificate of lease for LR No. 519/7/XXV (Grant No. I.R 1677) while effecting the registration of the said title in the applicants’ names. The fresh certificate of lease in the applicants’ names shall be issued once the parties follow the requisite procedure with the exception of the production of the original certificate of lease dispensed with hereinbefore.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 4TH DAY OF MAY 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

