



**Opuret v Mamai & another (Environment & Land Case  
180 of 2016) [2023] KEELC 17467 (KLR) (8 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17467 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT & LAND CASE 180 OF 2016**

**BN OLAO, J  
MAY 8, 2023**

**BETWEEN**

**BONIFACE OJUMA OPURET ..... PLAINTIFF**

**AND**

**WYCLIFFE MAMAI ..... 1<sup>ST</sup> DEFENDANT**

**WILLIAM EMOJONG ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a judgment delivered on February 9, 2022, OmolloJ decreed that:
  - a. The Estate of John Mamai has acquired a portion measuring 182 by 67 steps out of the land parcel No. L.R South Teso/Amukura/1072 by way of adverse possession.
  - b. The 2<sup>nd</sup> defendant be and is hereby declared as having acquired by way of adverse possession 1½ acres from the land parcel No. South Teso/amukura/1072.
  - c. The costs of the suit be awarded to the defendants in any event.
2. An application by the plaintiff to have the said judgment stayed pending the hearing of an intended appeal was dismissed vide my ruling delivered on January 19, 2023.
3. The defendants have now moved to this court vide their notice of motion dated March 14, 2023 seeking the following orders:
  1. That the Deputy Registrar of this court be directed to execute the transfer documents on behalf of the plaintiff to facilitate the transfer of L.R No. South Teso/amukura/1072 as per the judgment dated 9<sup>th</sup> February 2022.
  2. That costs of this application be provided for.



4. The application is supported by the affidavit of Wycliffe Mamaihe 2<sup>nd</sup> defendant herein.
5. The gist of the application is that by a decree of this court issued on February 9, 2022, the plaintiff's claim was dismissed and the court held that the Estate of John Mamaihas acquired by way of adverse possession a portion measuring 182 by 67 steps out of the land parcel No. South Teso/amukura/1072 by way of adverse possession. However, the plaintiff has not transferred 1½ acres from the land parcel No. South Teso/amukura/1072 hence this application.
6. When the application was placed before me on April 17, 2023, Mr Okeyocounsel for the plaintiff sought time to put in a replying affidavit within 14 days. However, by May 3, 2023 when the application came up for directions, Mr Okeyoinformed the court that he had been unable to get in touch with his client. Mr J. V. Jumacounsel for the defendants asked the court to treat the application as un-opposed.
7. I have considered the application, un-opposed as it is.
8. The orders issued by OmolloJ vide her judgment delivered on February 9, 2022 and which I have already referred to above, were that:
  - a. The Estate of John Mamaiis entitled to a portion measuring 182 by 67 steps out of the land parcel No. L.R South Teso/amukura/1072; and
  - b. The 2<sup>nd</sup> defendant is entitled to a portion measuring 1½ acres out of the land parcel No. South Teso/amukura/1072.
9. The Judge did not however issue any directions to the plaintiff to execute any documents to facilitate the transfer of those portions of land out of the land parcel No. No. South Teso/amukura/1072 to the Estate of John Mamaiand to the 2<sup>nd</sup> defendant. And neither were any default orders issued. It is therefore not surprising that the plaintiff, as deponed in paragraph 8 of the supporting affidavit, has not transferred the portion of land as per the said judgment. A party cannot be expected to voluntarily cede what he considers to be his property, especially land, particularly when, like in this case, he has demonstrated a desire to appeal the judgement and even filed an application for stay pending appeal. Therefore, the plaintiff's procrastination over the execution of the documents of transfer must be considered in that light and especially in view of that fact that no such orders were directed against him.
10. Having said so, however, it is clear that unless the documents for the transfer of the above portions are executed, the decree herein will remain hollow and incapable of execution. The defendants will have toiled in vain.
11. In the circumstances and having considered the Notice of motion dated March 14, 2023, I allow it in the following terms:
  1. The plaintiff shall within 14 days of this ruling execute all the necessary documents to facilitate the transfer of the portions of land parcel No. South Teso/amukura/1072 as per the judgment herein.
  2. No orders as to costs.

**BOAZ N. OLAO**

**JUDGE**

**8<sup>TH</sup> MAY 2023**

**Ruling dated, signed and delivered at BUSIA ELC on this 8<sup>th</sup> day of May 2023 by way of electronic mail.**



**BOAZ N. OLAO**

**JUDGE**

**8<sup>TH</sup> MAY 2023**

BUSIA ELC NO. 180 OF 2016 - RULING Page 2 of 2

