



**Mwitari (Legal Representative of the Estate of M'Ikunyua M'Mwongera
- Deceased) v Chege & 3 others (Environment & Land Case
35 of 2012) [2023] KEELC 17706 (KLR) (5 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17706 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 35 OF 2012**

CK NZILI, J

JUNE 5, 2023

BETWEEN

**ISAYA KIRIINYA MWITARI (THE LEGAL REPRESENTATIVE OF THE
ESTATE OF M'IKUNYUA M'MWONGERA - DECEASED) PLAINTIFF**

AND

NJERI WA CHEGE 1ST DEFENDANT

JOHN KIMANI CHEGE 2ND DEFENDANT

RICHARD KAMAU CHEGE 3RD DEFENDANT

WANJIRU CHEGE 4TH DEFENDANT

RULING

1. The court is asked by an application dated March 14, 2023 to allow the OCS Meru Police Station to provide security to the Land Registrar Meru in executing the decree of this court issued on May 2, 2014, since the respondents have expressed open hostility to its implementation.
2. The application is supported by an affidavit of Isaya sworn on March 14, 2023. He stated that he is the personal legal representative of the decree-holder who passed on July 21, 2022 which decree directed the land registrar to visit and fix beacons between LR No Nyaki/Kithoka/1697 and 1671. Further, the applicant stated that the deceased had made various attempts to have the land registrar carry out the exercise but required the provision of security.
3. In a replying affidavit sworn by Wanjiru Chege, the 4th respondent on May 22, 2023, she deposed that the judgment sought to be executed was *ex parte*, there was no service upon the defendants with summons to enter appearance and that they only became aware of the suit when the decree-holder sought for the reconstruction of a skeleton file. The 4th respondent termed the application as an ambush, full of



falsehoods, misleading and dishonest. In paragraph 11 of the reply, the 4th respondent averred that the respondents would be making a formal application to have the ex parte judgment set aside in order to defend the suit. Lastly, the 4th respondent urged the court to dismiss the application.

4. The central issue before the court is whether there is need to provide security during the execution of the decree by the Land Registrar Imenti North District. The decree sought to be executed is dated June 10, 2014. It is yet to be amended to reflect the legal representative of the judgment debtor although it is not mandatory under Sections 37 & 38 of the *Civil Procedure Act*.
5. The court under Section 38 of the *Civil Procedure Act* has the mandate to enforce the execution of its decree. Order 22 Rules 18, 19, 29, 31, 83 and 84 of the *Civil Procedure Rules* relate to notice to show cause and any obstruction thereof by the judgment debtor.
6. The judgment debtors herein are entitled to a notice to show cause since the instant decree is over one year. I find the application merited. The same is allowed so long as the rights of the respondents are protected in line with the law.
7. The OCS Meru Police Station is directed to provide security to the Land Registrar on the date he or she shall set and serve upon the respondents to visit the two parcels of land in line with the mandate under Sections 18-21 of the *Land Registration Act*.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 5TH DAY OF JUNE 2023**

In presence of

C.A John Paul

Mr. Ringera for the applicant

Respondents

HON. CK NZILI

ELC JUDGE

