



**Maru v Muchai & another (Environment & Land Case
E002 of 2021) [2023] KEELC 18583 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18583 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E002 OF 2021
MN MWANYALE, J
JULY 6, 2023**

BETWEEN

STANLEY TAPTOYEI MARU PLAINTIFF

AND

EMILY JEPTARUS MUCHAI 1ST DEFENDANT

BENJAMIN KIPROTICH TANUI 2ND DEFENDANT

RULING

1. The application before me is the one dated April 14, 2023 seeking for orders that;
 - i) Spent
 - ii) That, the Deputy Registry of this Court be and is hereby ordered/authorized to execute;
 - a) Application for consent for subdivision
 - b) Mutation forms
 - c) Transfer forms
 - d) And all other transfer forms.
 - iii. That the deputy registrar of this Honourable Court do sign the said documents on behalf of the 1st Defendant/Respondent in order to give effect to the decree to have the parcel No. Nandi/Kebulonik/344 subdivided.
 - iv. That, Costs of this application be provided.
2. The application is premised on the grounds appearing on the face of it together with supporting affidavit deponed by Stanley Kiptoyoi Maru on April 14, 2023.



3. This application was brought under certificate of urgency and placed before the duty Judge in Eldoret who directed the Applicant to serve the application within 7 days. On the date of inter-partes hearing, Mr. Maritim Counsel holding brief for Mr. Rotich for the Respondent indicated that they were not opposed to the application.
4. Although the application is unopposed, it is the duty of this Court to subject the same to a merit evaluation in line with the applicable laws and principles.
5. The application is brought under section 98 of the *[civil Procedure Act](#)* which provides that;

“ 98. Execution of instruments by orders of court.
Where any person neglects or refused to comply with a decree or order directing him to execute any conveyance, contract or other document, 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 operated and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”
6. This provision of the law empowers the court to elect the Deputy Registrar to execute and/or endorse any instrument of transfer in the event a person refused to comply with a decree or order of the court.
7. The effect of the decree of the Court issued herein, on February 8, 2023, annexed to the application, was that the Applicants had obtained title in respect of 2 acres of the suit property by way of adverse possession and were to be registered as proprietors after subdivision of the said property.
8. A perusal of the Originating Summons dated August 2, 2021, this court notes that the prayers sought only related to adverse possession and there was no such prayer for execution of transfer as well as Land Control Board consent forms by the Deputy Registrar. This explains why no such orders were made in the judgment of this Court delivered on December 20, 2022. The Plaintiff's were awarded only what was prayed for vide their Originating Summons. Nevertheless, this Court finds it fair and just to grant the orders sought in this application in order to give effect to the judgement and decree of this court.
9. In the premises, I hereby allow the notice of motion dated April 14, 2023 in terms of prayers (2) and (3) thereof. There shall be no orders as to costs.

DATED AND DELIVERED AND KAPSABET THIS 6TH DAY OF JULY 2023.

HON. M. N. MWANYALE,

JUDGE.

In the absence of parties

