



REPUBLIC OF KENYA



KENYA LAW
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**Hussein v Washiyambi (Civil Suit 157 of 1995)
[2023] KEELC 22600 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 22600 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
CIVIL SUIT 157 OF 1995
EC CHERONO, J
OCTOBER 11, 2023**

BETWEEN

IBRAHIM NYONGESA HUSSEIN PLAINTIFF

AND

ALI BOYI WASHIYAMBI DEFENDANT

RULING

Background

1. This application is dated June 21, 2020 and is brought under section 3A & 3B of the *Civil Procedure Act* seeking the following orders;
 1. That the county surveyor Kakamega County be ordered to conduct a survey in sub-dividing land parcel North Wanga/Matungu/1391 pursuant to the court's judgment dated May 23, 2013.
 2. That the O.C.S Matungu police station do provide security during the survey exercise to sub-divide land parcel number North Wanga/ Matungu/1391.
 3. That the costs be provided for.
2. The application is predicated on the grounds on its face and is expressed to be brought under section 3A of the *Civil Procedure Act* (cap 21) and all other enabling provisions of the law. It is further supported by the affidavit of Ibrahim Nyongesa Hussein sworn on June 21, 2022. The respondents were duly serviced but failed to file response. The application came up for hearing on July 4, 2023 when directions were taken and a ruling date reserved.
3. It was the applicant's case that he obtained a judgment against the respondent delivered on May 23, 2013. He averred that since then, he has been unable to have a surveyor sub-divide his portion of land from the larger piece because of security concerns. His prayer before this court was therefore to have the



surveyor visit the suit land for the sub-division exercise accompanied by police officers from Matungu Police station.

4. Having read the application, I find that it is evident the orders sought in this application are intended to enforce and implement the judgement of this court. It is trite that whenever a defendant fails to obey court orders, the Plaintiff gets assistance to ensure compliance. Since there is no order of stay of judgement and consequential orders from either the Superior Court or this court, there is no reason why the orders sought by the plaintiff/applicant cannot be granted.
5. The upshot of the foregoing is that the application has merits and the same is hereby allowed as hereunder: -
 1. The county surveyor Kakamenga Conty is ordered to conduct a survey in sub-dividing land parcel North Wanga/Matungu/1391 pursuant to the court's judgment delivered on 23rd May, 2013.
 2. The O.C.S Matungu police station is hereby ordered to provide security during the survey exercise to sub-divide land parcel number North Wanga/ Matungu/1391.
 3. Costs are awarded to the applicant.

It is so ordered.

DATED AND SIGNED AT BUNGOMA THIS 11TH DAY OF OCTOBER, 2023.

HON.E.C CHERONO

ELC JUDGE

