



Nyagol v Okello (Sued as the legal representative of Chillion Rakwach - Deceased) (Environment & Land Case 262 of 2013) [2023] KEELC 21286 (KLR) (7 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21286 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 262 OF 2013
SO OKONG'O, J
NOVEMBER 7, 2023**

BETWEEN

JAMES NYANGWESO NYAGOL PLAINTIFF

AND

**LILIAN ANYANGO OKELLO (SUED AS THE LEGAL REPRESENTATIVE OF
CHILLION RAKWACH - DECEASED) DEFENDANT**

RULING

1. In the judgment delivered on 31st October 2018 the court ordered as follows:
 - a) That an order of specific performance be and is hereby issued directing the Plaintiff to subdivide a rectangular portion of land measuring 60 feet by 200 feet from Kisumu/Nyalunya/2366 and transfer it the Defendant, namely Chillion Rakwach (deceased), upon obtaining the requisite statutory consents.
 - b) No order on the costs of the counter-claim is granted.”
2. A decree was extracted from the said judgment and issued on 15th November 2018. The said decree has not been stayed, varied or set aside. The Plaintiff’s application seeking to set aside the said judgment and decree was dismissed on 1st October 2021 and the Defendant’s party and party costs was taxed on 4th July 2022. What is now before me is an amended Notice of Motion dated 2nd November 2023 brought by the Defendant seeking the following orders;
 1. That the Deputy Registrar do sign all necessary documents including Mutation Form, application for Land Control Board consent and the transfer form on behalf of the Plaintiff/ judgment debtor in order to give effect to the decree of specific performance issued against the Plaintiff/Judgment debtor on 15th November 2018.



2. That pursuant to the order in (1) above, the Kisumu District Land Registrar do dispense with the production of the original title deed, if any issued to the Plaintiff/Judgment debtor in respect of Title No. Kisumu/Nyalunya/2366.
3. That pursuant to order (1) above, the Kisumu District Land Registrar do dispense with the production of copies of the Plaintiff/Judgment debtor's passport-size photos, Identity Card and Personal Identity Card.
4. That the costs of the application be borne by the respondent.
3. The application which is supported by the affidavit of the Defendant/Judgment creditor has been brought on the grounds that the Plaintiff/Judgment debtor has refused or neglected to comply with the order of specific performance that was made against him by the court on 31st October 2018 despite having been arrested and brought before the court to show cause why he had refused to comply with the court order. The Defendant has averred that the orders ought would facilitate the prompt execution of the decree of the court. The Defendant has annexed to her affidavit in support of the application among others, a copy of the decree of this court issued on 15th November 2018 and a copy of the Warrant of Arrest against the Plaintiff/Judgment debtor dated 3rd March 2020.
4. The application was served upon the advocates for the Plaintiff/Judgment debtor who did not respond to the same. When the application came up for hearing on 6th November 2023, the Defendant/Judgment creditor's advocate relied entirely on the grounds on the face of the application and urged the court to allow the application. I have considered the application together with the supporting affidavit. As I have mentioned earlier in the ruling, the judgment made herein on 31st October 2018 has not been varied, stayed or set aside. In the judgment, the Plaintiff/Judgment debtor was ordered by the court to subdivide and transfer to Killion Rakwach, deceased a rectangular portion of Title No. Kisumu/Nyalunya/2366 measuring 60 feet by 200 feet (approximately 0.11 hectares). From the evidence on record, the Plaintiff has refused to comply with the court order. On 4th September 2020 when the Plaintiff was arrested and brought before the Deputy Registrar to explain why he had defied the court order, the Plaintiff told the court "I don't intend to subdivide the land to the defendant". The Deputy Registrar (Hon. M. Shimenga) ordered that she would sign all necessary documents to give effect to the decree of the court issued on 15th November 2018.
5. Section 98 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya under which the Defendant's application has been brought provides as follows:

"Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document or 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 the conveyance, contract, document or instrument so executed or endorsed shall operate 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. In addition to Section 98 of the *Civil Procedure Act*, the court has inherent power to facilitate the execution of its orders and decrees. I am satisfied that the Defendant's application has merit. I allow the same on the following terms:



1. The Defendant is authorised to engage a licensed land surveyor to subdivide and excise a rectangular portion measuring 60 feet by 200 feet (0.11 hectares) from Title No. Kisumu/Nyalunya/2366 (the suit property).
2. Should it become necessary, Police Officers from the Police Station nearest to the suit property shall provide security to the surveyor while carrying out the subdivision exercise pursuant to order 1 above.
3. The Deputy Registrar, ELC Kisumu, is authorized to sign on behalf of the Plaintiff/Judgment debtor all documents that may be necessary for the successful subdivision and excision of the said portion of land from Title No. Kisumu/Nyalunya/2366.
4. Upon successful subdivision and excision of the said portion of land measuring 60 feet by 200 feet (0.11 hectares) from Title No. Kisumu/Nyalunya/2366, the Deputy Registrar, ELC Kisumu shall sign on behalf of the Plaintiff/Judgment debtor all documents necessary to effect the transfer of the said excised portion of the suit property to the name of Chillion Rakwach, Deceased in accordance with the decree of the court issued on 15th November 2018
5. The Defendant shall meet the costs and other expenses associated with the subdivision of the suit property and the transfer and registration of the said portion of land measuring 60 feet by 200 feet (0.11 hectares) to the name of Chillion Rakwach, Deceased.
6. The portion of the suit property that remains after the subdivision and transfer of the portion thereof measuring 60 feet by 200 feet (0.11 hectares) to the name of Chillion Rakwach, Deceased shall be in the name of the Plaintiff/Judgment debtor.
7. Since this is a transfer being effected by the Deputy Registrar of the court, the Land Registrar, Kisumu County is authorised to dispense with the normal formalities associated with the transfer of land such as the production of the Original Title Deed for the suit property, and the passport-size photographs and KRA Personal Identification Number for the Plaintiff/Judgment debtor, James Nyangweso Nyagol and Chillion Rakwach, Deceased if the same are not available.
8. Each party shall bear its own costs of the application since the Plaintiff/Judgment debtor did not defend the application.

DELIVERED AND DATED AT KISUMU THIS 7TH DAY OF NOVEMBER 2023.

S. OKONG'O

JUDGE

