



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 265 OF 2014

FRANCIS KITHAKA CUBI.....1ST APPLICANT

JOSEPH MUGO CUBI.....2ND APPLICANT

JOHN WARUI CUBI.....3RD APPLICANT

GABRIEL MUTHIGANI CUBI.....4TH APPLICANT

VERSUS

ISAACK ISIKA CUBI Alias ICHIKA CUBI...DEFENDANT

RULING

The Applicants filed the Notice of Motion dated 21st January 2019 seeking the following orders:

- 1. That the Defendant/Respondent to show cause why he should not be arrested and detained in prison for failing to execute and/or sign all the relevant necessary documents herein to give effect to the decree herein.***
- 2. That in default, warrant of arrest for committal to civil jail for a period of six (6) months to issue.***
- 3. That the Defendant's signature be dispensed with in all the relevant/necessary documents requiring the Defendant's signature in order to give effect to the decree herein.***
- 4. That the costs of this application be borne by the Defendant.***

The application is supported by the affidavit of Joseph Mugo Cubi and grounds shown on the face of that application. According to the Applicant, this Honourable Court issued judgment in his favour on 9th December 2016 and on 4th April 2018, a decree was issued. In order to implement the said decree, the Defendant is required to execute several documents. The Applicant stated that despite several requests to have the said documents executed, the Respondent has failed and/or declined and/or refused therefore necessitating the present application. He deponed that they have written to the Defendant's Advocates severally but the documents have not been executed. The Applicant stated that the Respondent should show cause why he should not execute all the relevant necessary documents to give effect to the decree herein. The Applicant further stated that the Respondent has failed to take serious the order/decreed of this Honourable Court hence he should be committed to civil jail for a period of six (6) months. The Applicant contends that if the Respondent fails to execute the said documents, this Honourable Court should make an order that the Defendant's signature be dispensed with in all the relevant necessary documents requiring his signature in order to give effect to the decree herein.

In reply, the Respondent filed a replying affidavit opposing the application sworn on 20th March 2019. The Respondent deponed that prior to the judgment of this Honourable Court, he had sub-divided the original parcel No. MWERUA/KITHUMBU/65 into six portions of land with the sole purpose of transferring to the plaintiffs and himself. The new numbers issued against the original parcel were as follows:

- MWERUA/KITHUMBU/2929, 2930, 2931, 2932, 2933 and 2934.

The Respondent further stated that the sub-division was not equal. He stated that five of those parcels were measuring approximately 0.10 Ha while MWERUA/KITHUMBU/2934 measures 1.18 ha.

I have considered the affidavit evidence and the submission by counsels. The application before me is seeking to enforce a decree of this Honourable Court issued on 4th April 2018. That decree reads as follows:

“That L.R. No. MWERUA/KITHUMBU/2929, 2930, 2931, 2932, 2933 and 2934 being a sub-division from the parcel of land number MWERUA/KITHUMBU/65 be shared out amongst the plaintiffs and the defendant equally”.

The Applicants in this application are seeking an order requiring the Respondent to show cause why he should not be arrested and detained in prison for failing to execute and/or sign all the relevant/necessary documents to give effect to the decree herein. Before enforcing the said order, the Applicant must demonstrate that the party sought to show cause was served with the documents he is required to sign and a penal notice warning him that failure to do so will lead to depriving him of his freedom. The Applicant has not shown that he has discharged that responsibility. Consequently the first prayer fails. In the second prayer, the same also fails for the same reasons. That no evidence has been shown that the Respondent was served with the documents for execution for purposes of effecting the transfer of the sub-divisions. Again, prayer No. 2 fails. In the third prayer, I find the same necessary for purposes of effecting the judgment and decree of this Honourable Court. I therefore allow the application in terms of prayer No. 3 of this application and direct the Land Registrar, Kirinyaga County to give effect to the decree of this Honourable Court by dispensing with the Respondent herein in all the relevant/necessary documents requiring his signature. The costs of this application shall be borne by the Respondent. It is so ordered.

READ and DELIVERED in open Court at Kerugoya this 5th day of July, 2019.

E.C. CHERONO

ELC JUDGE

5TH JULY, 2019

In the presence of:

- 1. M/S Mohindi holding brief for Mr. Ombachi for Applicants*
- 2. Respondent/Advocate – absent*
- 3. Mbogo Court clerk – present*