



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO 49 OF 2015**

**JAMES MURIITHI KAREU (Substituted Party for**

**KAREU NDEBU (Deceased).....PLAINTIFF/APPLICANT**

**VERSUS**

**NDEGE NDEBU.....DEFENDANT/RESPONDENT**

**RULING**

1. By a Notice of Motion dated 14<sup>th</sup> December 2020 and supported by an affidavit of even date, the Plaintiff herein approached the court seeking the following orders:

***(i) That the firm of M/S Wanjiru Waweru & Co Advocates be granted to come on record in place of the firm of Ikahu Ng'anga & Co Advocates as appearing for the substituted Plaintiff/Applicant after judgement;***

***(ii) That the Deputy Registrar of the court be authorized to sign all necessary transfer documents to give effect to the decree issued on 29<sup>th</sup> May 2020 in respect of land parcel BARAGWE/RAIMU/237 on behalf of the Defendant/Respondent***

***(iii) That the court be pleased to order the Land Registrar Kirinyaga to dispense with the production of the original title deed for land parcel BARAGWE/RAIMU/237, National ID Card, KRA PIN Certificates and Passport Photos of the Defendant/Respondent during the registration process;***

***(iv) That the court be pleased to order the OCS Kianyaga police station to provide security during the subdivision exercise;***

***(v) That parties be at liberty to avail their own private surveyors during the sub division exercise;***

***(vi) That the costs of the application be provided for.***

2. The Plaintiff's prayers are grounded on the following considerations:

a) That the court issued a decree on 29<sup>th</sup> May 2020 whereby the court held that the Defendant/Respondent holds LR BARAGWE/RAIMU/237 also described as BARAGWE/RAIMU/223 measuring 2.34 Hectares in trust for himself and the Plaintiff and further directed that the Land Registrar conduct sub division of the said parcel into two equal parts and the land register be rectified accordingly;

b) That the Plaintiff has prepared all the necessary transfer documents but the Defendant has declined to sign them and any effort to have him transfer the parcel of land have not borne fruit;

c) That the Plaintiff as a successful litigant ought to be allowed to enjoy the fruit of judgement.

3. In spite of service of the application to the Defendant/Respondent on 20<sup>th</sup> January 2021 and service of a hearing notice on 28<sup>th</sup> April 2021, the Defendant failed to file his response to the application. No submissions are filed by either parties on the application.

4. Indeed, the court did on the 29<sup>th</sup> Day of May 2020 issued the following decree in this matter:

*"It is hereby ordered:*

(1) A declaration that the Defendant holds land Parcel No. Baragwe/Raimu/237 also described as Baragwe/Raimu/223 measuring 2.34 Ha in trust for himself and the Plaintiff.

(2) The Land Registrar Kirinyaga Court do conduct sub division of the said parcel No. Baragwe/Raimu/237 also described as Baragwe/Raimu/223 into two equal portions and the Land Registrar do rectify the Register accordingly;

(3) That each party to bear his own costs of the suit”.

5. Nothing has been placed before the court to show that the judgement above has been set aside. Notice is take of the fact that although the Defendant/Respondent herein had sought a stay of execution vide a notice of motion application dated 16th June 2020, the same was dismissed on 16th October 2020 for failure of the Defendant/ Respondent to demonstrate that he would otherwise suffer substantial loss.

6. In the end, the Defendant/Respondent has not shown why the orders sought by the Plaintiff/Applicant ought not to be granted. The court is satisfied with the explanation given by the Plaintiff/Applicant and finds nothing to prevent his enjoyment of the fruits of judgement. The court is persuaded by the case of *Eustace Mungai Mathigu & another Vs Mwaura Mathigu [2019] e KLR* whose facts are remarkably similar to those in the present case:

*“The respondent has therefore not offered any reasonable explanation why the orders sought by Applicants should not be granted. The orders sought by the Applicants are equitable remedies which administrative in nature; the Applicants must enjoy the fruits of the judgment delivered in their favour. I find that the Applicants have given sufficient reasons for this Court to exercise its discretion in their favour.*

*Section 3A of the Civil Procedure Act provides that nothing in the Act shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the needs of justice or to prevent abuse of the process of the Court. In this case the Applicants have a judgment in their favour. Nothing has been placed before this Court to show that the said judgment has been set aside, vacated and or appealed.*

*The rights of the parties in the suit were equally determined and what has remained is execution by subdivision and transfer of the relevant portion to the Applicants and the Respondent included. It would be unjust for the parties to have a judgment in their favour and at the same time be unable to enjoy the fruits or for that matter realize the outcome of the said judgment. Orders or decrees of the Court cannot be made in vain. Allowing this scenario to take root is tantamount to permitting blatant disobedience of orders and extreme hardship to a successful litigants entitled to such remedies as contained in a judgment in their favour.”*

7. The upshot of the analysis above is that the court grants the following orders:

i. That the firm of M/S Wanjiru Waweru & Co Advocates is allowed to come on record in place of the firm of Ikahu Ng’anga & Co Advocates as appearing for the substituted Plaintiff/Applicant after judgement;

ii. That the Deputy Registrar of the court is authorized to sign all necessary transfer documents to give effect to the decree issued on 29<sup>th</sup> May 2020 in respect of land parcel BARAGWE/RAIMU/237 on behalf of the Defendant/Respondent;

iii. That the court orders the Land Registrar Kirinyaga to dispense with the production of the original title deed for land parcel BARAGWE/RAIMU/237, National ID Card, KRA PIN Certificates and Passport Photos of the Defendant/Respondent during the registration process;

iv. That the court orders the OCS Kianyaga police station to provide security during the subdivision exercise;

v. That parties are at liberty to avail their own private surveyors during the sub division exercise;

vi. That costs are awarded to the Plaintiff/Applicant.

**READ, DELIVERED AND SIGNED IN OPEN COURT AT KERUGOYA THIS 21ST DAY OF MAY, 2021.**

.....

**E.C. CHERONO**

**ELC JUDGE**

In the presence of:

1. Ms Wanjiru Waweru for Applicant – present

2. Defendant/Respondent – absent

3. Kabuta – Court clerk.