



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC NO. 81 OF 2014**

**(Formerly NYERI CMCC No. 422 of 2013)**

**CHARLES MUKOMA KIMARU..... PLAINTIFF**

**-VERSUS-**

**JOHNSTONE MUCHOMBA KAGAYU.....DEFENDANT**

**RULING**

1. By a notice of motion dated 25<sup>th</sup> March, 2021 brought under the provisions of **Section 31 of the Land Registration Act, 2012** and **Order 51 rule 1 of the Civil Procedure Rules, 2010**, the Defendant through the firm of Kebuka Wachira and Company Advocates sought the following orders:

(a) That the Honourable court be pleased to issue an order directing the County Land Registrar, Nyeri to dispense with the production of the title deed for Land Reference Number Kirimukuyu/Kiria/251 issued to the Plaintiff on 10<sup>th</sup> September, 2013.

(b) That costs of this application be borne by the Respondent.

2. The application was based on the grounds set out on the face of the application and the supporting affidavit sworn by the Defendant, Johnstone Muchomba Kagayu on 25<sup>th</sup> March, 2021. The Defendant averred that he had a decree in his favour against the Plaintiff passed on 4<sup>th</sup> October, 2018. In pursuance of the decree, the Deputy Registrar has already signed all the necessary transfer documents with authority of the court. However, for the registration to be completed the original title deed for the suit property which was in the Plaintiff's possession had to be surrendered. It was contended that the Plaintiff's failure to surrender the original title deed had stalled the process necessitating the Defendant to move the court to issue an order directing the Land Registrar, Nyeri to dispense with the production of the original title deed. The Defendant also prayed for the costs of this application.

3. The Plaintiff opposed the application by way of a replying affidavit sworn on the 25<sup>th</sup> June, 2021. In the replying affidavit, the Plaintiff contended that he intended to pursue an appeal against the decree. He further stated that the Defendant's application was not necessary since he has commenced some discussions with the Defendant with on an out of court settlement. He, therefore, averred that the Defendant's application lacked merit and was an abuse of the process of court.

4. The court record confirms that indeed judgment was passed in the Defendant's favour on the 4<sup>th</sup> day of October, 2018 and a decree issued thereafter decreeing that the Plaintiff was registered as a trustee of parcel of land Kirimukuyu/Kiria/251 for the Defendant and his other family members and that the trust be terminated. Consequently, an order was made in the Defendant's favour upon the hearing of an application dated 21<sup>st</sup> March, 2019 whereby the court authorized the Deputy Registrar of the court to sign all the necessary transfer documents on behalf of the Plaintiff to give effect to the decree.

5. This court has fully considered the Defendant's application dated 25<sup>th</sup> March, 2021, the material on record and the replying affidavit of the Plaintiff. The court is satisfied that the application is merited and necessary to give effect to the decree of the court and enable the Defendant enjoy the fruits of his Judgment. The opposition by the Plaintiff holds no water. Accordingly, the Defendant's application is hereby allowed as prayed with costs to be borne by the Plaintiff.

Orders accordingly.

**RULING DATED AND SIGNED IN CHAMBERS AT NYERI AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 14<sup>TH</sup> DAY OF JULY 2021**

In the presence of:

Mr. Makura holding brief for Mr. Gori for the Plaintiff

Ms. Gichama holding brief for Mr. Wachira for the Defendant

Court assistant – Wario

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**Y. M. ANGIMA**

**ELC JUDGE**