



**Mwaniki v Thangari; Mwangi (Interested Party) (Civil Appeal
1 of 2018) [2024] KEHC 5382 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5382 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL APPEAL 1 OF 2018
AK NDUNG’U, J
MAY 9, 2024**

BETWEEN

RICHARD MWANGI MWANIKI APPLICANT

AND

JASON MUITA THANGARI RESPONDENT

AND

JAMES WAMBUGU MWANGI INTERESTED PARTY

RULING

1. Before the Court is the Notice of Motion dated 27th March, 2024. It seeks orders;
 - a. That the Order issued on the 9/2/2023 be amended to read Land Registrar – Laikipia West instead of Land Registrar -Nyandarua.
 - b. That a sum of Kshs: 643,000/= out of the sum of Kshs: 1,200,000/= deposited in Court by the Respondent be ordered to be released to the firm of M/s Waichungo Martin & Company Advocates on behalf of the Appellant Richard Mwangi Mwaniki.
 - c. That the costs of this application be borne by the Respondent.
2. The Application is supported by the affidavit of Richard Mwangi Mwaniki sworn on 27th March 2024 and based on grounds;
 - a. That there is an error apparent on the face of the order issued on the 9/2/2023 which order was directed to the wrong Land Registrar.
 - b. That the records for LR No: Laikipia/Mutitu Ngoru Block 4/273 (Manguo) are held at the Rumuruti Lands Registry – Laikipia West and not Nyandarua County.



- c. That the Court did on the 20/12/2023 order that the Appellant Richard Mwangi Mwaniki is entitled to a sum of Kshs: 643,000/= out of a sum of Kshs: 1,200,000/= deposited in Court by the Respondent.
 - d. That an order for release of the aforesaid money to the Appellant through his advocates on record is mandatory for the money to be paid/released.
 - e. That the respondent declined to consent to the prayers sought and he should thus be ordered to bear the costs of the application.
3. There is no response to the said application.
 4. The gist of the application as gleaned from the grounds and supporting affidavit is that a sum of Kshs. 1,200,000 was deposited in court by the Respondent towards satisfaction of a decree. A substantial part of the deceptal sum was recovered from sale by public auction of the respondents land. According to an earlier ruling of this court (Kariuki J), the sale did not raise the entire deceptal amount leaving a balance of Kshs. 643,000. While observing that any shortfall arising from under sale of the property below the reserve price set was visited on the Applicant by himself, the court made a finding that the Applicant was entitled to Kshs. 643,000 from the deposited sum of Kshs. 1,200,000. It is in respect of this sum that the Applicant seeks specific order of release.
 5. Secondly, it is sought that the order of court dated 9th day of February be amended to read “the County Land Registrar Laikipia” as the records for land parcel LR No. Laikipia/Mutitu Ngoru Block4/273 (Manguo) are held at the Rumuruti Lands Registry-Laikipia West and not Nyandarua County.
 6. I have carefully perused the record of court herein. The averments by the Applicant are true. There is a specific finding by the court that out of the Kshs. 1,200,000 deposited in court, the Applicant is entitled to Kshs. 643,000.
 7. To my understanding this is a clear order of the court and on the basis of a letter to the Deputy Registrar, I would find no difficulty on the part of the registrar releasing the said sum on the strength of the court’s clear statement of the Applicant’s entitlement. It appears that, perhaps, out of abundance of caution, the Deputy Registrar and the courts finance section deemed a specific order necessary.
 8. As regards the amendment of the order to remove a restriction lodged on LR. No. Laikipia/Mititu Ngoru Block 4/233, since its shown that the records of the parcel are held in a separate registry, that amendment is necessary.
 9. In effect therefore, the orders sought merely target giving effect to the earlier orders of court. It is in the interest of justice to facilitate execution of the court orders and the orders sought will achieve just that.
 10. With the result, that the application dated 27th March 2024 is meritable and is allowed in terms of prayers 1 and 2. The application having not been opposed, I make no orders as to costs.

DATED SIGNED AND DELIVERED THIS 9TH DAY OF MAY 2024.

HON. JUSTICE A.K. NDUNG’U

JUDGE

