



**REPUBLIC OF KENYA**

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

**ELC SUIT NO. 558 OF 2007**

**MICHAEL BORO WARUI (*Suing as personal*)**

*representative of the estate of*

**JOSEPH WARUI MWANGI).....1<sup>ST</sup> PLAINTIFF**

**LOISE WACHEKE BORO.....2<sup>ND</sup> PLAINTIFF**

**JAMES KIMANI BORO.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**GRACE NYAMBURA MBUGUA.....1<sup>ST</sup> DEFENDANT**

**AMOS NDUNG’U MBUGUA.....2<sup>ND</sup> DEFENDANT**

**SIMON KAGIRI MBUGUA.....3<sup>RD</sup> DEFENDANT**

**FELIX KIMANI MBUGUA.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. Coming up for ruling is a Notice of Motion application dated 15<sup>th</sup> September 2020 by the plaintiffs, seeking the following orders:

*i. Spent.*

*ii. THAT the Honourable Court do make order directing a Government survey to enter land reference GITHUNGURI/KIARIA/2232 and subdivide the same into two equal portions to be registered in the names of Micheal Boro Warui, Loise Wacheke Boro, and James Kimani Boro, on one part and Grace Nyambura Mbugua, Amos Ndungu Mbugua, Simon Kagiri Mbugua and Felix Kimani Mbugua on the other part as ordered by this court on 24<sup>th</sup> January 2019.*

*iii. THAT the Deputy Registrar of this Court be allowed to sign transfer forms and any other relevant forms on behalf of Defendants to effect transfer of the portions subdivided to the Plaintiffs.*

*iv. THAT this court issue an order authorising the OCS Githunguri Police Station to provide security to the surveyor to enable him enter into land Ref. GITHUNGURI/KIARIA/2232 to comply with the Court decree herein.*

*v. THAT the costs of this Application be provided for.*

2. This application is supported by the 1<sup>st</sup> plaintiff’s affidavit dated 15<sup>th</sup> September 2020 who avers that the defendants have failed to comply with the court decree issued on 15<sup>th</sup> February 2019 which emanated from the judgement of this court delivered on 24<sup>th</sup> January 2019. It is also stated that the respondents have failed to allow the surveyor access to the suit land for subdivision purposes as ordered by the court.

3. No responses were filed in respect of the current application despite there being service as per the affidavit of service dated 27<sup>th</sup> May 2021 filed in court.

4. To aid in arriving at a decision, this court made reference to the judgement by Lady Justice Jane Onyango which was delivered by Justice

Eboso on 24<sup>th</sup> February 2019 which ordered as follows:

*a) A declaration is hereby issued that the parcel of land originally known as Githunguri/ Kiaria/687 registered in favour of the deceased Mbugua Mwenja Kagiri and subsequently subdivided into Githunguri/Kiaria/1969 and Githunguri/ Kiaria/1970 registered in favour of the defendants and which was further consolidated into Githunguri/Kiaria/2322 registered in the name of the defendants was so registered in trust and for the benefit of the defendants and the plaintiffs.*

*b) That all the subdivisions and subsequent transfer and consolidation of the suit premises formerly known as Githunguri/Kiaria/687 are hereby cancelled.*

*c) That the District Land Registrar in custody of the subject registries do forthwith proceed to rectify the registers by cancelling the title to the parcel of land currently known as Githunguri/Kiaria/2322 and subdividing it into two equal proportions to be registered in the names of Michael Boro Warui, Loise Wacheke Boro and James Kimani Boro on one part and Grace Nyambura Mbugua, Amos Ndungu Mbugua, Simon Kagiri Mbugua and Felix Kimani Mbugua on the other part.*

*d) The defendants shall bear costs of this suit.*

5. This court finds that there is no evidence or justification why the court orders through the judgement and subsequent decree have not been effected since year 2019. It has been stated time and again that court orders are not given in vain and should be respected, see- **Olive Mwihaki Mugenda & another v Okiya Omtata Okoiti & 4 others [2016] Eklr**. As such, the plaintiffs have a right to enjoy the fruits of their judgement.

6. In the final analysis, I hereby allow the application dated 15.9.2020 and defendants are condemned to pay costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF NOVEMBER, 2021 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

James Kimani present in Person

Micheal Baro present in Person

Court Assistant: Edel Barasa