



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL CASE NO. 198 OF 1991**

**CHARLES MWANGI MUTUANGURE.....PLAINTIFF/APPLICANT**

**VERSUS**

**HINGA SIMON GICHOMO**

**MURANGA COUNTY COUNCIL.....DEFENDANTS/RESPONDENTS**

**RULING**

1. The application is premised under the provisions of Section 98 of the Civil Procedure Act and Order 51 of the Civil Procedure Rules; the applicant seeks an order authorizing the Deputy Registrar of this court to sign all the necessary documents of mutation, subdivision, consent and transfer on behalf of the first defendant/respondent **HINGA SIMON GICHOMO** to effectuate the court orders of this court dated 7/03/21 and also seeks for an order that costs be provided for.
2. The application was supported by the grounds on the face of the application and on an affidavit made by the applicant dated the 22/02/2021;
3. Here is a brief summary of applicant's case; on the 7/03/2018 the court ordered the County Surveyor Muranga County to go to the ground and excise two (2) acres from LR No. LOC 9/Kanyenyaini/383 inclusive of tea bushes; this was in line with the decree dated 16/11/1992; the County Surveyor Muranga County visited the parcel of land and prepared the Mutation Forms dated 11/06/2020;
4. That the order made on 7/03/2019 relates to Hinga Simon Gichomo and the applicant avers that Hinga Simon Gichomo is the party who is supposed to sign the documents and that he is long deceased; a copy of the Death Certificate is annexed to the application in support of this fact;
5. He prays that the application be allowed in the interests of justice so as to bring closure to this very old matter;
6. This court notes that the application is made ex-parte and no explanation is given for this procedure; the applicant is in possession of a Death Certificate of the 1<sup>st</sup> respondent which would lead this court to presume that the applicant must be in contact with the deceased respondent's next of kin; unfortunately there is no averment made by the applicant on the efforts made to contact the 1<sup>st</sup> respondent's next of kin and or on their refusal to take out the requisite Letters of Administration; or if in possession of a Grant, have refused sign the requisite documents to effectuate the judgment and decree herein;
7. In order for the order sought to be granted there is need for evidence on the willful refusal, failure or neglect on the part of the deceased's respondent's kin leading to the applicant being unable to transfer the land as required by the judgment; in the absence of such evidence at this stage the direction to the Deputy Registrar cannot be merited;

**FINDINGS AND DETERMINATION**

8. From the fore-going reasons this court makes the following findings and determinations that;

1) The application is not merited at this stage.

2) There is already an order of this court made on 19/03/2018 which authorized the Deputy Registrar of this court to sign all the necessary documents for subdivision and transfer for LR Number LOC 9/KANYANYAINI/1778 in furtherance of effecting the decree;

3) Applicant at liberty to apply;

4) There shall be no order as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 17<sup>TH</sup> DAY OF JUNE, 2021**

**HON. A.MSHILA**

**JUDGE**