

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 459 OF 2010

JAMES GITINGU WAMAGATA.....1ST PLAINTIFF

JOSPHAT MAINA MACHARIA.....2ND PLAINTIFF

VERSUS

DAVID MIGICHI KAGENI.....DEFENDANT

RULING

This court entered judgement in favour of the 1st Plaintiff on 15/10/2018 vide which it directed the Defendant to undertake a subdivision of the land known as Dagoretti/Kinoo/4176 (“the Suit Property”) into two portions out of which the portion measuring 0.05 hectares (ha) was to be transferred to the 1st Plaintiff and Defendant was to retain the portion measuring 0.5 ha.

The Plaintiff filed the application dated 2/5/2019 on 3/7/2019 seeking to have the Deputy Registrar of the court execute the documents necessary for the subdivision of Dagoretti/Kinoo/4176 and subsequently transfer the 1st Plaintiff’s portion in execution of the decree issued on 16/11/2018. The application was made on the grounds that the Defendant had refused to cooperate with the 1st Plaintiff in the subdivision process as directed by the court; and that the 1st Plaintiff cannot carry out the subdivision because the land is registered in the 1st Defendant’s name. The application was supported by the 1st Plaintiff’s affidavit deponing to the difficulties he encountered in his quest to enforce the court’s decree.

The court has considered the application and finds that it has merit. It is allowed in terms of prayer number 1 and 2. The prayer for eviction is declined. The Plaintiff is directed to follow the procedure for eviction under the law. Costs shall be in the cause.

Delivered virtually at Nairobi this 28th day of May 2020

K.BOR

JUDGE

In the presence of:-

Mr. Muchangi Nduati for the Plaintiffs

Mr. V. Owuor- Court Assistant

No appearance for the Defendant