



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 181 OF 2013

TITUS KUTO KIPUNGAR.....PLAINTIFF

VERSUS

SELINA TAMINING.....1ST DEFENDANT

PIUS ROTICH.....2ND DEFENDANT

MUSA KOSKEI.....3RD DEFENDANT

JAMES KIPYEGO.....4TH DEFENDANT

RULING

1. This is a ruling in respect of the application dated **9/12/2019** brought by the defendants. It seeks the following orders:

- 1. That this court be pleased to issue a vesting order to vest 17.25 acres out of land parcel No. West Pokot/Siyoi/263, to the defendants.**
- 2. That this court do direct the plaintiff/respondent to execute forms for application to the Land Control Board for subdivision and transfer forms in favour of the defendants within such time as to be set by the court.**
- 3. That in default of the plaintiff/respondent executing the forms, the Deputy Registrar of this court be pleased to execute the same.**
- 4. That the plaintiff/respondent be directed to surrender the original title deed for land parcel No. West Pokot/Siyoi/263 to Deputy Registrar of this court.**

2. The application is brought under **Sections 3 and 3A of the Civil Procedure Act.**

3. The application is supported by the affidavit of the 2nd defendant sworn on **9/12/2019**. The affidavit reiterates the same matters set out in the grounds at the bottom of the application.

4. The grounds upon which the application is premised are that this court awarded the defendants an equal share out of the Land Parcel No. **West Pokot/Siyoi/263** measuring **13.8 Ha** i.e. **34.5 acres** and that the plaintiff has failed and/or neglected to give effect to the judgment of the court.

5. The plaintiff filed grounds of opposition dated **15/11/2019**. Those grounds state that the instant application is misplaced; that there is no evidence annexed to the application to enable the court to order **17.5 acres** to vest in the defendants; that the prayers sought in the instant application are substantive prayers that ought to have been brought by way of a plaint; that the instant application is an abuse of the due process of the court; that the application is devoid of evidence of refusal by the plaintiff to comply with the judgment; that no notices to show cause have ever been served upon the plaintiff and that the application herein is not merited at all and does not conform to the law.

6. On **13/2/2020** this court ordered the application dated **9/1/2020** to be disposed of by way of written submissions. The plaintiff/respondent filed submissions on **24/2/2020**. The defendants did not file submissions.

7. I have considered the application the response and the submissions filed.

8. The issues that arise from the application are as follows:

- a. Whether this court should issue a vesting order to vest 17.25 acres out of LR Number West Pokot/Siyoi/263 in the defendants**
- (b) Whether an order should issue to direct the application to the Land Control Board for subdivision and transfer forms in favour of the defendants and in default the Deputy Registrar of the court should sign the same.**
- (c) Whether the plaintiff should be compelled to surrender the original title deed to the Deputy Registrar.**

9. The issues are addressed herein under:

- (a) Whether this court should issue a vesting order to vest 17.25 acres out of LR Number West Pokot/Siyoi/263 to the defendants**

10. This court delivered judgment in favour of the defendants on 7/11/16. The plaintiff's appeal against the judgment was dismissed on 25/7/2019. It appears that to date the plaintiff has not complied with the judgment of this court. However by virtue of that judgment the land is already vested in the defendants. This court should not therefore issue another order of similar effect. The Land Registrar is obliged to comply with the judgment of the court, cancel the title in the name of the plaintiff and issue fresh titles in the names of the plaintiff and the defendants.

- (b) Whether an order should issue to direct the plaintiff to sign any application to the Land Control Board for subdivision and transfer forms in favour of the defendants and in default the Deputy Registrar of the court should sign the same.**

11. As stated hereinabove the land is already vested by way of an order of this court in the defendants. This is a matter in which the court declared a trust and then ordered that the same be terminated. It is not a controlled transaction for the purposes of registration of the land in the defendants' names. It is a registration compelled by the court. In the circumstances no consent of the Land Control Board to transfer is required. The court has already ordered that the title held by the plaintiff be cancelled and separate titles be issued in favour of the plaintiff and the defendants in equal shares. In the circumstances I order that the registration of the entitlement of the defendants in their names requires no land control Board Consent, this being no controlled transaction within the meaning of **section 6** of the **Land Control Act**.

12. I therefore decline to order that the plaintiff to sign any application to the Land Control Board for subdivision and transfer forms in favour of the defendants and in default the Deputy Registrar of the court should sign the same.

- (b) Whether the plaintiff should be compelled to surrender the original title deed to the Deputy Registrar.**

13. In the light of the circumstances leading to the application it is clear that the plaintiff is not intent or ready and willing to effect the judgment voluntarily and compulsive measures are an alternative. When dealing with such a litigant who is not ready to bring the proceedings to a close by obeying the judgment it is necessary to issue compulsive orders and an alternative.

14. I find that the plaintiff should surrender the title not to the Deputy Registrar but to the Land Registrar for cancellation.

d. What Orders should issue?

15. In the final analysis I decline to grant the prayers in the application and order as follows:

- a. The plaintiff shall surrender the original title deed to LR Number West Pokot/Siyoi/263 to the Land Registrar Trans Nzoia County for cancellation within 21 days of this order.**
- b. The Land Registrar shall cancel the said title and issue fresh titles as ordered by the judgment in this suit.**
- c. In default of the surrender of the title by the plaintiff as ordered in (a) above, the Registrar shall deem the title as lost and after the necessary procedures dispense with its production and proceed with the issuance of new titles as ordered in the judgment.**
- d. The Deputy Registrar of this court shall execute all documents necessary for the effectuation of the registration as ordered by the judgment.**
- e. The plaintiff shall bear the costs of this application.**

It is so ordered.

Dated, signed and delivered at Nairobi via electronic mail on this 28th day of May, 2020.

MWANGI NJOROGE

JUDGE, ELC KITALE.