



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

ENVIRONMENT & LAND CASE NO.26 OF 2014

MARGARET NANYAMA WANYAMA.....1ST APPLICANT

KENNEDY W. WANYAMA.....2ND APPLICANT

VERSUS

VINCENT WEKESA BARASA.....RESPONDENT

RULING

The plaintiff / Applicant herein filed this suit on 7th February 2014 seeking the main order that they be awarded 0.375 acres out of plot **No.124 SOY SAMBU SCHEME**.

The defendants did not enter any defence and on 7th July 2015, the late **MUKUNYA J** delivered this short judgment which I shall reproduce as it is relevant to the application now before me:

“JUDGEMENT

The plaintiffs claim in the plaint claim (sic) is for 0.375 acres to make 1½ acres a per agreement from land parcel No. Plot No. 124 SOY SAMBU SCHEME. There is no defence filed to this claim.

The defendants who are served did not attend.

There is no opposition to this claim at all. The same is allowed as prayed in the plaint. Each party should bear its own costs.

MUKUNYA, J

7th June 2015.”

Arising out of that judgment, the 1st plaintiff **MARGARET NANYAMA WANYAMA** has filed a Notice of Motion dated 16th July 2018 seeking the main prayer that this Court do authorize the Deputy Registrar to sign the relevant transfer forms to transfer 1.175 acres from land parcel No.124 to the Plaintiff / Applicant.

The application is not opposed.

I have considered the application and looked at the judgement of the late **MUKUNYA J** which I have referred to above.

It is clear from that judgement, from which no appeal was filed, that the Plaintiff / Applicant is entitled to 0.375 acres from land parcel **No.124 SOY SAMBU SCHEME** to make her share 1½ acres. My understanding of the judgement is that she already owns a portion from the suit land but what she desires is 0.375 acres so that her portion is increased to 1½ acres. She cannot therefore now claim that a portion measuring 1.175 acres be transferred to her as per her application.

In the circumstances, the application dated 16th July 2018 is hereby allowed but only to the extent that the Deputy Registrar signs transfer forms on behalf of the Defendant to transfer to the Plaintiff / Applicant a portion measuring 0.375 acres from land parcel **No. 124 SOY SAMBU SCHEME**.

No order as to costs.

BOAZ N. OLAO

JUDGE

22ND NOVEMBER 2018

Ruling dated, delivered and signed in open Court this 22nd day of November 2018.

1st Applicant – present

2nd Applicant – Absent

Respondent – Absent

BOAZ N. OLAO

JUDGE

22ND NOVEMBER 2018