

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ENVIRONMENT AND LAND CIVIL CASE NO. 29 OF 2009

JAMES AJWANG ODIYO..... PLAINTIFF

VERSUS

1. THOMAS GAT OMONDI

(sued as the legal administrator of OMONDI OUKO, deceased)

2. VICTOR ONGARO NYAWIRI..... DEFENDANTS

RULING

1. The plaintiff brought this suit against the defendants on 17th February, 2009 by way of originating summons dated 12th February, 2009 seeking among other orders, an order that the plaintiff be registered as the proprietor of the whole of that parcel of land known as **LR No. Central Kasipul/Kamuma/443** (hereinafter referred to as “**the suit property**”). The plaintiff’s suit was heard by Sitati J. who in a judgment delivered on 2nd November, 2012, ordered that the plaintiff be registered as the proprietor of the suit property in place of the defendants.

2. What is now before me is the plaintiff’s application by way of Notice of Motion dated 26th February, 2013 in which the plaintiff has sought an order that the Deputy Registrar of this court be pleased to execute all documents necessary to effect the transfer and registration of the suit property in the name of the defendant in accordance with the judgment of this court delivered on 2nd November, 2012 aforesaid. The plaintiff’s application was brought on the grounds that this court in its judgment delivered on 2nd November, 2012 made an order that the suit property be registered in the name of the plaintiff in place of the defendants. The plaintiff extracted a decree from the said judgment and served copies thereof upon the defendants for compliance. The defendants have refused and/or ignored to comply with the said decree in that they have not taken steps to transfer the suit property to the name of the plaintiff as ordered by the court.

3. It is on account of the foregoing that the plaintiff has been compelled to come back to court and seek leave for the Deputy Registrar to execute in place of the defendants all documents as may be necessary to effect the transfer of the suit property to the plaintiff in compliance with the terms of the said decree. The plaintiff’s application was served upon the advocates for the defendants and upon the defendants directly. The defendants did not file grounds of opposition or replying affidavit in opposition to the application. I have considered the application together with the affidavit filed in support thereof. I am satisfied that the application has merit. This court has power to assist in the execution of its orders and decrees. Where a party ordered by the court to transfer property to another fails or refuses to do so, the court has power under section 98 of the Civil Procedure Act, Cap. 21 Laws of Kenya to nominate another person to execute the documents necessary to effect the said transfer. The plaintiff’s contention herein that the defendants have refused to transfer the suit property to him in accordance with the decree of this court has not been rebutted. I can see no prejudice which will be suffered by the defendants if the orders sought by the plaintiff are granted.

4. In conclusion, I am satisfied that the plaintiff has laid a proper basis for the orders sought in the application dated 26th February, 2013. The application is allowed in terms of prayer 2 thereof. Each party shall bear its own costs.

Delivered, signed and dated at KISII this 14th of November, 2014.

S. OKONG'O

JUDGE

In the presence of:-

Mr. Ochwang'i for the plaintiff

N/A for the defendants

Mr. Mobisa Court Clerk

S. OKONG'O

JUDGE