



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC 288 OF 2012

PETER K. GITAHL.....1ST PLAINTIFF

NDUNGU MUGOYA.....2ND PLAINTIFF

VERSUS

AKUISI FARMERS CO. LTD.....1ST DEFENDANT

JOHN KAGAI.....2ND DEFENDANT

RULING

(Application seeking execution of a decree; decree being one over land owned by a land buying company; applicant seeking orders for the Sub-County Commissioner to execute the order; best that the applicant first attempts compelling the directors of the company to execute the order; application dismissed).

1. The application before me is that dated 13 February 2018 filed by the plaintiffs/decreed holders. They have asked for the following orders :-

- (i) That the Bahati Sub-County (sic) oversees the resurveying of land parcels LR No. 8943, 8944 and 9949 to its original 3353 members do the ballot (sic).*
- (ii) That the District Surveyor Nakuru to enter the said parcels and resurveys and subdivides the said parcels for the original members who number 3353.*
- (iii) That the District Land Registrar cancels any title if issued to any other persons other than the original members.*
- (iv) That the Officer Commanding Officer Post (OCPD)(sic) do provide security during the exercise as we are apprehensive of the other party resisting the exercise causing disorder hence breaching the peace.*
- (v) That the County Commissioner/Bahati Sub-County Commissioner to oversee the exercise i.e surveying and balloting.*
- (vi) That costs be provided.*

2. The application is supported by the affidavit of Peter K. Gitahi and Ndungu Mugoya, the plaintiffs herein. Briefly, the plaintiffs filed this suit against Akuisi Farmers Limited, a land buying company, and one John Kagai, who was described in the plaint as a director of the company. They averred in their suit that they are members of Akuisi Farmers, and contended that the company owns the parcels of land described as LR Nos. 8943, 8944, and 9949. They sought orders that these parcels of land be distributed among the company's 3353 members. The defendants did not file any defence nor appear at the hearing of the suit. I heard the suit and entered judgment for the plaintiffs. It seems as if the defendants despite, being served with the judgment, have not implemented it, hence this application. Neither have they filed anything to oppose this motion.

3. I am not averse to granting orders that will ensure execution of the judgment herein. However, at the outset, I am not persuaded that the decree is best executed by the persons to whom the orders are directed, at least not at this moment. The duty to execute the judgment herein is upon the directors of Akuisi Company Limited. If they have not gone ahead to execute the judgment, the applicants need to consider filing an application for contempt before attempting to have the judgment executed by strangers who may not be too conversant with the affairs of the company.

4. My simple direction on this application is to direct the applicants to file an application for contempt, or such other appropriate application, against the directors of Akuisi Farmers Company Limited.

5. For the above reasons, I proceed to dismiss this application.

6. I make no orders as to costs.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 13th day of February 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Ms Nancy Njoroge holding brief for Mr. Omenta for the applicants.

No appearance for the respondents.

Court Assistant: Nelima Jenipher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU