



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE 173 OF 2011**

**THE SALESIAN OF DON BOSCO**

**REGISTERED TRUSTEES.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**SHEM MZEE AFLATOON.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**FLOMENA NYAMBURA MBOGO.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 11<sup>th</sup> August 2016 brought under Order 41 Rule 1 of the Civil Procedure Rules, Section 3 and 3a of the Civil Procedure Act and all enabling provisions of the law.

2. It seeks order:-

**1. Spent**

**2. That the respondents be ordered to hand over the title deed of the property known as Dagoretti/Riruta/475 to enable the applicant effect the transfer of the said property into the name of the applicant.**

**3. That in the alternative this honorable court do direct the registrar of land Nairobi to register the above property into the name of the applicant and do all that is within his or her power to have the property transferred into the name of the applicant.**

**4. That costs of this application and suit be paid by the respondents.**

3. The grounds are on the face of the application and are set out in paragraphs 1 to 4.

4. The application is supported by the affidavit of Father Eric Mairura Priest and Director of the applicant sworn on the 11<sup>th</sup> August 2016.

5. The application is not opposed. On the 10<sup>th</sup> May 2017 the defendants/respondents were given 14 days to file and serve their responses. By 31<sup>st</sup> October 2018 they had not done so. By the date of writing this ruling, there is no response to the notice of motion dated 11<sup>th</sup> August 2016.

6. I have considered the notice of motion, the affidavit in support and the annexures. The issue for determination is whether the application is merited.

7. I have gone through the plaintiff's/applicant's bundle of documents dated 25<sup>th</sup> July 2016. By a sale agreement dated 17<sup>th</sup> August 2000 the defendant agreed to sell to the defendant the said portion of the land for a consideration of Kshs 1,800,000. I have seen copies of cheques drawn in favour of the 1<sup>st</sup> defendant/respondent and copies of letters from the 1<sup>st</sup> defendant to M/S Shapley Burett & Company Advocates authorizing payments to Mr. Joseph Njuguna Kabera. Thereafter the defendants/respondents signed all the necessary documents to effect transfer in favour of the plaintiff. From the documents filed it is not in doubt that the plaintiff bought the said portion of land and paid the full consideration.

8. In its plaint dated 14<sup>th</sup> April 2011, the plaintiff seeks a declaration that the defendants are holding LR NO. Dagoretti/Riruta/4945 in trust for the plaintiff. It also seeks an order that the said parcel be transferred to the plaintiff. Despite being served with copies of the plaint and summons to enter appearance the defendants did not file any defence. The claim is therefore undefended. The defendants neglected to file any response to the notice of motion dated 11<sup>th</sup> August 2016. I find that the averments by Father Eric Mairura have not been rebutted. The plaintiff's documents have not been challenged.

9. The upshot of the matter is that, I find merit in this application and I grant the orders sought namely:-

**a. That the defendants/respondents are hereby ordered to hand over the title deed of property known as Dagorett/Riruta/475 to enable the plaintiff/applicant effect the transfer of the said property into the name of the plaintiff/applicant.**

**b. In the alternative the registrar of lands Nairobi is hereby directed to register a portion of the said property Dagoretti/Riruta/475 in the name of the plaintiff/applicant and do all within his/her power to have the property transferred in the plaintiff's/applicant's name.**

**c. That the costs of this application and of the entire suit be borne by the defendants/respondents.**

It is so ordered.

**Dated, signed and delivered in Nairobi on this 25<sup>TH</sup> day of MARCH 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate for the Plaintiff

.....Advocate for the 1<sup>st</sup> & 2<sup>nd</sup> Defendants

.....Court Assistant