



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 466 OF 2017**

**ESTHER WANJIRA KAMAU.....PLAINTIFF**

**VERSUS**

**GEORGE CHEGE KAMAU.....DEFENDANT**

**RULING**

***(Application seeking execution of a judgment; judgment being that suit land be subdivided into two equal portions between plaintiff and defendant with plaintiff getting the portion where the houses are located; defendant not agreeing on the subdivision; Deputy Registrar to oversee the subdivision as proposed by the plaintiff).***

1. The application before me is that dated 4 September 2018 filed by the plaintiff. In the application, she has sought orders that the land parcel Dundori/Miroreni Block 2/56 (Ndimu) be subdivided into two equal portions and that the Executive Officer and/or Deputy Registrar do execute the mutation forms and be authorized to transfer one portion of the subdivision, that with houses, to the applicant. There is no reply that has been filed to oppose the motion.

2. To put matters into context, the applicant filed this suit in the year 1998, and claimed that she and the respondent, while cohabiting, purchased the land parcel Dundori/Miroreni Block 2/56 (Ndimu) (hereinafter referred to as “the suit land”) which is land measuring 10 acres. She claimed that the respondent has proceeded to fraudulently register the land in his sole name. The matter was contested and heard by Rimita J, who delivered judgment on 28 June 1999 and made the following orders:-

*(b) The defendant is ordered to subdivide LR No Dundori/Miroreni Block 2/56 (Ndimu) into two equal portions and transfer one equal portion to the plaintiff. The plaintiff to get the portion with the houses her son occupies.*

*(b) In default of doing so within 30 days from the date of this judgment, the Executive Officer of this court will sign all the necessary forms leading to subdivision of LR No. Dundori/Miroreni Block 2/56 (Ndimu) and transfer one half share to the plaintiff.*

*(c) The costs of this case and interest thereon be paid by the defendant.*

3. The respondent was aggrieved by this judgment and preferred an appeal to the Court of Appeal. An order of stay pending appeal was issued. The appeal was eventually heard and dismissed. It does however appear that while the appeal was pending the applicant moved and subdivided the land into two portions which became registered as Dundori/Miroreni Block 2/2289 and 2290 the former of which she caused to be registered in the name of the respondent and the latter in her name. An application was made before me to nullify these subdivisions and I did oblige as to me the applicant had proceeded to execute the judgment while there was already an order of stay of execution pending appeal. I also held that it was wrong for the applicant to execute the decree before the same was settled.

4. Following the nullification of the two titles, I directed counsel for both applicant and respondent to proceed and try to agree on how the land should be subdivided following the judgment of the court. The parties could not agree and I directed that either party may file a proposal on how to subdivide the land. None has been filed by the respondent.

5. I have looked at the subdivision proposal presented by the applicant. I note that the land is 10 acres and the proposal is to subdivide the land into two equal portions. On one portion is where the houses are located. To me, that proposal conforms to the judgment of the court and I see no problem with it. I see no reason why I should not allow it. In any event, as I have mentioned, the respondent has not presented any proposal of his own.

6. I therefore allow the subdivision of the suit land as proposed by the applicant. I direct the Deputy Registrar to proceed and execute the requisite mutation forms. The portion where the houses will fall will be the portion that will be registered in the name of the applicant and the Deputy Registrar is also authorized to execute all requisite documents that will lead to the registration of the two subdivided portions and

eventual transfer to the applicant.

7. The applicant will have the costs of this application.

8. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 7<sup>th</sup> day of March 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In Presence of :-**

Ms. Njagua present for the plaintiff/applicant.

No appearance on the part of M/s P.W Macharia & Co. for the defendant.

Court Assistant: Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**