

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**ELC OS NO. E005 OF 2023**

**BERNARD MUSEMBI MUTHAMA.....APPLICANT**

**-VERSUS-**

**JOHN MUTINDA NDIVO .....**

**RESPONDENT**

**JUDGMENT**

1. The Applicant filed an Originating Summons under the provisions of Order 36 Rules 3 and 7 of the Civil Procedure Rules seeking the following orders:

**1) That the share and interest of John Mutinda Ndivo of title No. Makueni/Kinyambu Scheme/2036 be vested in Benard Musembi Muthama.**

**2) That the Deputy Registrar of this honourable court to execute the transfer forms to effect transfer to Benard Musembi Muthama.**

**3) That this honourable court be pleased to issue any other orders in the circumstances to achieve Justice on the part of the Applicant as it may deem fit.**

**4) Costs of the application be provided for.**

2. The Respondent who was duly served through advertisement in the Standard Newspaper neither entered appearance nor filed a replying affidavit. The hearing therefore proceeded by way of formal proof.

3. At the hearing, the Applicant testified that on 19<sup>th</sup> October, 1997, he entered into a sale agreement with the Respondent in respect of sale of title number Makueni/Kinyambu Scheme/2036. The purchase price was Kshs.475,000/- which the Applicant paid in full.

4. On 20<sup>th</sup> September, f2017, the Respondent obtained title in respect of the land sold to the Applicant. He handed over the original title to the Applicant as he had already sold the land to the Applicant. After a few days of handing over the title to the Applicant, the Respondent who was staying in a small house in the land came and bade the Applicant farewell never to be seen again.
5. The Applicant produced a letter from the chief of Kinyambu location confirming that the Respondent had sold his land to the Applicant and that he relocated to an unknown destination. The Applicant also produced a copy of the title in the name of the Respondent.
6. The evidence of the Applicant was not controverted. There is a sale agreement between the Applicant and the Respondent. The title is in the name of the Respondent. The Respondent having sold all his interest in the land and his whereabouts being unknown, there is need for vesting order to issue vesting the land upon the Applicant. I therefore allow the Originating Summons in the following terms:
  - a. **An order is hereby given that the share and interest of John Mutinda Ndivo in title No. Makueni/Kinyambu Scheme/2036 do vest in Benard Musembi Muthama.**
  - b. **An order is hereby given directing the Deputy Registrar of this court to execute transfer forms to effect transfer of Makueni/Kinyambu Scheme/2036 to Benard Musembi Muthama.**
  - c. **The costs of this application be provided for.**

.....  
**HON. E. O. OBAGA**  
**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS  
THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**IN THE PRESENCE OF:**

Mr. Muthui for Mr. Munyasya for Applicant.

Court assistant - Mueni

ORIGINAL