

REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 436 OF 2017

BONDI NAFWAYO (DECEASED)

ENOCK PONDI MUFOYA (LEGAL REP).....APPLICANTS

VERSUS

ELIZABETH MUKOTHELANI

ENOS WANJALA

ISAAC JUMA.....RESPONDENTS

RULING

The application is dated 28th February 2018 and is seeking the following orders:-

1. That the Deputy Registrar of this honourable court be empowered to sign transfer documents to effect transfer of parcel of land No. KABRAS/SURUNGAI/36 to the 2nd applicant Enock Pondi Mufoya.
2. That the respondents be ordered pay the costs of this application.

It is based on the following principal grounds that the respondents have refused to sign transfer papers to have the parcel Kabras/Surungai/36 transferred to the 2nd applicant. That the parcels are still in the name of the respondents. That as the legal representative the respondents ought to transfer the same to him which they have refused. This court has authority and jurisdiction to grant the orders sought.

The 2nd and 3rd Respondents submitted that, the 1st respondent herein Elizabeth Mukothelani is since deceased and she was the administrator to the estate of the deceased. (Annexed hereto is a copy of burial permit marked EWIJ 1'). That prior the demise of the deceased herein Elizabeth Mukothelani after succession, she transferred the above mentioned parcel of land into their names since she had given birth to 5 daughters and therefore felt that they should hold in trust for her daughters. That there was a case filed in this honourable court civil case No. 98 of 2003 whereby during this case, they never got the opportunity/chance to defend themselves in court and a ruling was read and the matter was finalized. That they are not the owners of the above mentioned parcel of land but just the trustees and therefore they request that the daughters of the deceased herein Elizabeth Mukothelani be involved in this matter since they do not have any powers to carry transfer unless they have authorized them.

This court has considered the application and the submissions therein. I have perused the court file and find that on the 10th February 2011 judgement was entered in this matter in favour of the applicant Justice Lenaola J ordered that;

“I will allow the summons with the consequence that the applicant shall be registered as proprietor of (6) six acres of land to be excised out of land parcel no. Kabras/Surungai/36 and the originating summons dated 17.12.2003 is allowed in its entirety save that I shall make no orders as to costs since the summons is undefended.”

This decision has never been appealed and stands to date. It is the applicants submissions that the respondents have refused to comply. I find this application is merited and grant the same. I order that the Deputy Registrar of this honourable court be empowered to sign transfer documents to effect transfer in terms of the judgement in this case dated 10th February 2011. Each party is to bear its own costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9TH DAY OF APRIL 2019.

N.A. MATHEKA

JUDGE