



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ntungani v Orket (Environmental and Land Originating Summons  
150 of 2008) [2025] KEELC 8156 (KLR) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8156 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 150 OF 2008  
AY KOROSS, J  
NOVEMBER 25, 2025**

**BETWEEN**

**DAVID OYIARE NTUNGANI ..... PLAINTIFF**

**AND**

**MATUIYA OLE NAISUAKU ORKET ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of a notice of motion filed by the plaintiff dated 12C02C2025, which is stated to have been brought under Sections 47 and 74 of the *Law of Succession Act*, Rules 49 and 73 of the Probate and Administration Rules, and all other applicable provisions of law. In it, the plaintiff seeks the following reliefs from this court: -

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a. Spent.

b. That the honourable court do issue an order to the effect that the deputy registrar do sign all the relevant documents to effect subdivision and transfer of the portion measuring approximately 4.04ha to be excised from the parcel of land known as KJDCLORNGUSUAC1292.

c. Costs of the motion be in the cause.

2. The motion is premised on the grounds stated on its face and the supporting affidavit sworn by the plaintiff on the same date. A summary of the grounds in support of the motion is as follows:

(a) there is currently a ruling issuing execution against the defendant, who is the registered owner of the parcel of land KJDCLORNGUSUAC1292, by way of attachment of the said parcel of land in favour of the plaintiff;



- (b) consequently, the plaintiff, through a firm of auctioneers, has sold a portion of the said property measuring approximately 10 acres to Matura Sarah, who holds ID card no. via an auction, and he wishes to have the said parcel of land subdivided to enable him to transfer the 10-acre portion to the purchaser; and Lastly,
- (c) the surveyor has proceeded to prepare the mutation forms to facilitate the subdivision, and the registered proprietor of the land should sign these however, the defendant has been adamant in participating in the said subdivision and transfer of the portion of land, hence the need for the deputy registrar to sign the mutation forms, application for consent, and transfer documents to ensure the smooth transfer of the 10 acres to the new purchaser. Several annexures were tendered to this court that substantiate these assertions. The motion is unopposed and was argued through oral submissions made by MCs. Mbilo for the plaintiff on 15C05C2025, where she urged this court to grant the prayers sought.
3. Accordingly, the court has thoroughly examined the motion, its grounds, affidavit, and records, and the sole issue for determination is whether this court should direct or empower the deputy registrar to sign relevant documents on 4.04ha to be exercised from the parcel of land known as KJDCLORNGUSUAC1292.
4. In addressing this issue, it is necessary to examine the relevant law while noting that the plaintiff relied on inapplicable provisions of legislation. It arises that in situations where a party neglects or refuses to comply with a decree or order directing them to execute an instrument, a party is authorised to invoke Section 98 of the *Civil Procedure Act*, which states: -
- “Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”
5. A reading of this provision chiefly highlights that a decree or order against a party requiring him to execute certain documents, such as a conveyance, must exist. Once this threshold is met, the court may appoint someone to execute or endorse the documents, as appropriate, in place of the party directed initially to do so.
6. Now, concerning the matter at hand, judgment was entered in favour of the plaintiff by this court on 12C05C2017, and among the orders was that of costs. When the defendant moved the court, he was, on 23C11C2023, granted a conditional stay to facilitate an appeal to the Court of Appeal; however, he failed to do so, and such orders were vacated by a ruling given on 26C07C2019. This ruling paved the way for the execution of the decree.
7. Thereafter, the plaintiff moved the court by an application dated 19C08C2020, seeking several reliefs, including leave to effect execution by way of attachment and sale by auction of 6.5 ha of KJDCLORNGUSUA 1292. Upon hearing him, the court, in its ruling of 16C04C2021, granted him several reliefs as follows: -



- a. The Plaintiff/Decree Holder is hereby granted leave to effect execution by way of attachment and sale by Auction of a portion of land known as KJDCLORNGUSUA 1292, subject to valuation.
  - b. Pending the sub-division and sale of a portion of land known as KJDCLORNGUSUA 1292, a prohibitory order is hereby issued, prohibiting the Judgment Debtor from transferring or charging, or encumbering or alienating the property in any way and prohibiting all persons from taking any benefit from such purported transfer, charge, encumbrance, or alienation, and the prohibitory inhibition to be registered against the title.
  - c. The Plaintiff to engage a valuer and a surveyor to value the parcel of land known KJDCLORNGUSUA 1292 and hive off a portion of the land which will satisfy the decretal amount; the fees for valuation; the survey fees, the land rates and land rent and the said portion of land to be sold in a public auction pursuant to the provisions of the Civil Procedure Rules.
  - d. The Plaintiff/Decree Holder is hereby granted permission to bid for or purchase the portion of the Defendant's property that will be sold pursuant to the above orders.
  - e. Each party to bear his own costs.
8. Armed with this ruling and its order, Eagle Eye Auctioneers conducted a public auction on 28C06C2024 regarding 10 acres of KJDCLORNGUSUA 1292, and the highest bid was for Kshs. 2,400,000 from Matura Sarah ("Matura"). Having successfully bid for this property, Matura is entitled to be registered as the owner of the 10-acre portion of KJDCLORNGUSUA 1292, and the defendant has a duty to facilitate such registration, which he has declined.
  9. To this court's mind, and having reviewed the entire record, the defendant has clearly been negligent and has continuously sought to delay the execution of the decree on costs, which this court will not tolerate. Moreover, as a successful bidder who has made the necessary payments, Matura should not be denied the right to enjoy her property simply because the defendant has refused and/or neglected to sign the relevant documents, which are intended to obstruct the final execution of this court's decree.
  10. In the circumstances, this court is satisfied this is a proper case in which the court should exercise its discretion under Section 98 of the *Civil Procedure Act* and nominates the deputy registrar of this court to execute the necessary instruments to hive off and transfer 10 acres (4.04 HA) of KJDCLORNGUSUA 1292, to Matura. In the end, the notice of motion dated 12C02C2025 is allowed. Since the plaintiff was successful, costs are awarded to him. Ultimately, the final disposal orders issued are as follows: -
    - a. The deputy registrar of this court is hereby directed to sign all the relevant documents to effect subdivision and transfer of the portion measuring approximately 4.04ha to be excised from the parcel of land known as KJDCLORNGUSUAC1292 to Sarah Matura.
    - b. The plaintiff is awarded the costs of this notice of motion.

Orders accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. A. Y. KOROSS**



**JUDGE**

11.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant.

No appearance for parties.

