



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 211 OF 2014

WILLIAM JUMA MBUIPLAINTIFF

VERSUS

THE PUBLIC TRUSTEE.....1ST DEFENDANT

NAIVASHA SUB COUNTY ADMINISTRATOR....2ND DEFENDANT

RULING

(Application to have Deputy Registrar sign requisite transfer documents and to dispense with title for purposes of transferring land to the applicant; parties already having a consent judgment to the effect that the parties will exchange their respective land parcels but respondent not providing the document of title or ready to execute the requisite instruments; application allowed)

1. The application before me is that dated 20 November 2018 filed by the plaintiff. He is seeking the following orders (paraphrased for brevity) :-

- a. Spent (certification of urgency)
- b. That the Deputy Registrar be ordered to execute all relevant documents to effect transfer of the land Plot No. 144/528/143 owned by Peter Kariuki Kuria (deceased) who is represented by the 1st respondent.
- c. That the title deed to the said Plot No. 1144/528/143 be dispensed with.
- d. That the Land Registrar do issue the applicant with a Certificate of Title to the said Plot No. 1144/528/143.
- e. That the Land Registrar do Gazette the fact that the title deed to the Plot No. 1144/528/143 has been dispensed with and that a fresh title deed shall issue to the applicant.
- f. That costs of this application be provided for.

2. To put matters into context, this suit was filed on 21 July 2014 with the Public Trustee sued as 1st defendant on behalf of the estate of Peter Kariuki Kuria (deceased). The plaintiff averred that he is the registered proprietor of the land parcel LR No. 1144/528/145 having been so registered on 29 July 1983. This is a residential plot situated within Site & Service Estate in Kabati, Naivasha Town. The plaintiff further averred that the deceased was registered as owner of the Plot No. 1144/528/143. The plaintiff pleaded that in the early 1980s the deceased illegally built a permanent house on the plaintiff's plot No. 1144/528/145 but that his rightful plot No. 1144/528/143 was vacant.

3. On 25 January 2018, the parties filed a consent vide which they agreed to exchange the two plots so that the plaintiff becomes registered as owner of the Plot No. 1144/528/143 and the estate of the deceased become registered as owner of the Plot No. 1144/528/145.

4. In this application, it is contended that despite the consent of the parties, the estate of the deceased have failed to surrender the title deed to the Plot No. 1144/528/145 to the applicant, yet the applicant has already executed the required transfer instruments to transfer his land to the estate of the deceased, and is ready to surrender his title deed.

5. The application is not opposed and on my part I see no reason why I should not allow it. The parties already have consent to exchange their respective parcels of land in order to have the dispute resolved. The applicant has averred readiness to surrender his title deed and has executed the transfer forms to transfer his land to the estate of the deceased. The estate of the deceased should also do likewise. I was

informed that the beneficiaries of the estate of the deceased have refused to surrender the title instruments. They are bound by the consent herein and thus if they have failed to surrender the title instruments I have no option but to direct the Land Registrar to proceed and effect registration of the title to the applicant in absence of the title deed. The Land Registrar is thus at liberty to Gazette that he will proceed to transfer the land to the applicant without the title deed and that the applicant will be issued with a fresh title deed to the land parcel No. 1144/528/45. The Deputy Registrar is also authorized to execute all requisite instruments in order to effect transfer of the plot No. 1144/528/45 to the applicant.

6. In essence I do allow prayers (b) (c) (d) and (e) of the application.

7. On costs, this application was not necessary if the estate of the deceased had cooperated to have the judgment executed. The applicant will thus have costs of this application to be paid by the estate of the deceased.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 2ND day of April 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Gichuki for the applicant.

No appearance for the respondents.

Court Assistant : Nelima/Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU