



Gatumu v Registrar of Lands Nairobi (Miscellaneous Application E097 of 2023) [2026] KEELC 223 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KEELC 223 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E097 OF 2023**

**MN KULLOW, J
JANUARY 22, 2026**

BETWEEN

DAVID KIVUTI GATUMU APPLICANT

AND

REGISTRAR OF LANDS NAIROBI RESPONDENT

RULING

1. The matter is in relation to land parcel No Dagoretti/Riruta/4957 herein referred to as the suit property. The Applicant has filed a Miscellaneous Application dated 16th October, 2023, seeking the following orders: -
 1. The Honourable Court be pleased to issue an order directing the registrar of lands, Nairobi, to dispense with the production of the title deed in respect of Land Title Number Dagoretti/Riruta/4957 for purposes of issuance of a new title deed bearing the new parcel number Nairobi Block 66/4957.
 2. Upon issue of the new title, the old title deed for title number Dagoretti/Riruta/4957 be nullified.
 3. The costs of the application be provided for.
2. The application is grounded on the affidavit sworn on an even date by the applicant on grounds that the applicant is the legitimate registered owner of the suit property pursuant to a Judgement in Milimani ELC Case No. 442 of 2009 Simon Kirui Gathuna vs David Kavuti Gatimu & Waciama Timber Hardware Limited, consolidated with Milimani ELC Case No. 465 of 2005 Simon Kirui Gathuna vs Waciama Timber Hardware Limited. He depones that the parcel had been converted into Nairobi Block 66/4957 and is necessary to have the title capture the said changes as he seeks to have the property registered in his name.



3. He further deponed that it will be in the interest of justice if the court directs the respondent to dispense with the requirement to produce the old title and issue a new title in his name.
4. Lastly, he stated that delay in filing the application was due to the fact that he was not in a position to carry out the intended transaction upon issuance of the orders due to financial challenges
5. The respondent entered appearance and objected via ground of opposition dated 14th November 2024 on the ground that the application was filed prematurely as the orders issues in the above-mentioned matter were self-executing.
6. The application was dispensed with by written submissions with the applicant being the only complying party

Submissions by the Applicant.

1. The Applicant reiterated the contents in the application and submitted that the application is meant allow for the implementation and execution of a judgment of the court and allow him enjoy the fruits of his judgement having proved to the court that the process of acquiring the title has been frustrated by the previous owner of the suit property
2. The applicant relied on the decisions in *Simon Ng'ang'a Njoroge v Daniel Kinyua Mwangi* [2016] eKLR to emphasize that production of the title can be dispensed with on valid grounds.
3. In conclusion, the Applicant urged the Court to grant the orders as in the application with costs to the applicant.

Issues for determination before the court

7. Upon considering the application, the grounds of objection, and the Applicant's submissions, the Court is of the view that the following issues arise for determination.
 1. Whether the applicant is entitled to the orders as prayed?
 2. Who should bear the costs?

The applicant has asked this court to issue orders to the respondent to dispense off with the original title being that the transfer process after the judgement was issued has been frustrated by the previous owner and being the successful party, he should be entitled to enjoy the judgement hence the need to do away with the requirement of production of title.

The applicant has relied on Section 31 of the *Land Registration Act*, No. 3 of 2012 which section reads

1. If a certificate of title or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and, if the certificate of title or the certificate of lease shows all subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate of lease.
2. Where the disposition is a transfer, the certificate shall, when produced, be cancelled, and in that case a new certificate may be issued to the new proprietor From the above section it can be inferred that production of a title is a requirement before any dealings happen in relation to a parcel of land, but the registrar can dispense off with the same.



The issue of dispensation of title has been addressed in various case laws including the case of John Chege Mbatia v Harbir Singh Roorai & 2 others [2021] eKLR the Hon Justice Mbugua relied on two cases on the issue, that is Re Estate of Phillip Kiogo Tunga (Deceased) [2020] eKLR and the case of Charles Ntiritu M'Ikunyua & 3 others v Stephen Robert Gitonga Njagi [2021] eKLR. In the first case it was held that though production of the original title deed is the general requirement in registration of transfer of land, Land Registrars have consistently failed to exercise discretion provided in law to dispense with production of original title deed in appropriate cases. The court went on to hold that that the Land Registrar has power to dispense with the production of the original title and that there is no requirement that exercise of the power is dependent upon a Court order to do so.

In the Charles Ntiritu case (supra), the court observed that where a party desires the exercise of the Land Registrar's discretion in its favour the correct procedure is to request the Land Registrar in writing citing reasons for why they ought to be allowed not to produce the original title deed; perchance the Registrar refuses to exercise that discretion only then should the requesting party move to court if aggrieved by the Registrar's decision. It was also observed in that case that where the transfer is subject to a court order, such as in the present case relating to adverse possession, a second court order to dispense with production of the original title deed is not n In In this matter the applicants has not produced any evidence to show that she sought to be excused from the requirement to produce the original certificate of lease in order for the land to be registered in his favour; also, no evidence has been adduced to demonstrate the respondent's refusal to dispense with the production of the original certificate of lease of the suit land.

In the case of Kenya Commercial Bank Ltd v Alcon Holdings Limited eKLR (2021) Limited the court held as follows:

“Section 31(1) of the Act allows the Land Registrar to dispense with the production of a certificate of title to land or lease during the registration of any dealing with the land or lease. The application for such dispensation should be made to the Land Registrar who shall determine whether to allow it or not. The court can intervene in the matter under Section 86(1) of the Act in case a party is aggrieved by the decision of the Land Registrar on the issue. There is no evidence before me that an application for dispensation with the production of the certificate of title for the suit property had been made to the Land Registrar. This court cannot order the Land Registrar to dispense with the production of the said certificate of title in the absence of evidence that an application for such dispensation has been made to the Land Registrar and the Land Registrar has unreasonably refused to dispense with the production of the same. Furthermore, the court can only intervene when moved to exercise its review jurisdiction under section 86(1) of the Act aforesaid.”

Be that as it may I hold the view that the applicant might have failed to file the application to the respondent out of lack of awareness of the legal scope of his power to act to solve the problem at hand. The the Land Registrar should have advised the applicant to lodge a written request for dispensation with his so that he may grant the same or decline and give reasons so as to pave the way for a review under Section 86(1) of the Act.



It is therefore just that this court considers the plight of the applicant.

Determination

1. Consequently, in the interest of justice I find that the application is merited and the court makes orders that the Land Registrar, Nairobi dispenses with the requirement as to the production of the original certificate of title for LR No Dagoretti/Riruta /4957 while effecting the registration of the said title in the applicant's name bearing the new parcel Nairobi/Block 66/4957
2. That upon issuance of the new title, the old title for LR No Dagoretti/Riruta/4957 be nullified.
3. Cost of the application are awarded to the applicant.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22ND DAY OF JANUARY, 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

No appearance for the Applicant

No appearance for Respondent

Philomena W. Court Assistant

