



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ELC NO. 4 OF 2022
(FORMERLY ELDORET ELC NO. 358 OF 2016)

MARY JEPKEMOI CHEBII PLAINTIFF

= VERSUS =

DICKSON KIPKOSGEI 1ST
DEFENDANT

WILSON KIBET CHANGWONY 2ND
DEFENDANT

PIUS KIPROP KIMITEI 3RD
DEFENDANT

PHILIP K. NGETICH 4TH
DEFENDANT

JULIUS KANGOGO 5TH
DEFENDANT

MONICA KOECH 6TH
DEFENDANT

PETROLINA CHEPYEGO KIBET 7TH
DEFENDANT

MARY ROTICH 8TH

DEFENDANT

BARNABA KEMBOI **9TH**

DEFENDANT

JOSEPH CHEPTOCH **10TH**

DEFENDANT

EVANS KIPROTICH KENDAGOR **11TH**

DEFENDANT

R U L I N G

1. Vide a judgment of this Court delivered on 22nd November 2023, this Court dismissed the Plaintiff/Respondent's case against the 5th and the 9th Defendants/Applicants on the ground that the portions sold by the Plaintiff's deceased father did not form part of the free Estate of the Plaintiff's deceased father's Estate which the Plaintiff could administer as she purported to do.
2. To give effect to the judgment, I ordered the Plaintiff to transfer to the 5th and 9th Defendant the portions of the suit property the 5th and the 9th Defendants bought from

her father, failing which the Deputy Registrar of this Court would execute the transfer forms.

3. Accusing the Plaintiff of neglect and/or refusal to comply with the judgment and the decree issued in respect thereof, the 5th and the 9th Defendants/Applicants filed the notice of motion, application, dated 9th September 2025 seeking the following orders: -

1. Spent

2. The County Surveyor Elgeyo Marakwet, be ordered to carry out subdivision by curving out portions of judgment property as per the judgment of the Honourable Court from that parcel of land known as Irong/Mutei/450 in implementation of the decree issued on 22nd November 2023 and the OCS Iten Police Station to provide security to the County Surveyor Elgeyo Marakwet County during the exercise of

subdivision of the judgment property;

3. That the Land Registrar Elgeyo Marakwet County to ensure registration and transfer of the new parcel numbers over subdivision of the parcel known as Irong/Mutei/450 in compliance with decree of this Honourable Court issued on 22nd November, 2023.
4. Costs of the application be provided for.
5. The application is premised on the grounds that the Plaintiff/judgment debtor, is reluctant to comply with the decree of the Honourable Court issued on 22nd November 2023; that there is need for security to be provided during the subdivision exercise to ensure that the decree of this Honourable Court is executed peacefully; that there is thus need for Iten Police Station to provide security to the County Surveyor, Elgeyo Marakwet County during the exercise; that it is in the interest of

justice and fairness that the orders sought are granted and that the application has been brought expeditiously and without any delay.

6. The application is supported by the affidavit of the 9th Defendant/Applicant one Barnaba Kemboi sworn on 9th September, 2025 in which the grounds on the face of the application are reiterated. Annexed to the supporting affidavit is the decree sought to be executed, issued on 22nd November 2023.
7. The application is opposed through the replying affidavit of the Plaintiff/Respondent advocate, Elijah Momanyi Mogona, sworn on 23rd September 2025 who has deponed as follows:-

“

- 3. That the decree as extracted by the 5th and 9th Defendant is incapable of enforcement;**
- 4. That the decree ought to clearly indicate**

that the 5th Defendant was awarded 0.10 of an acre while the 9th Defendant was awarded 0.15 of an acre out of LR Irong/Mutei/450;

5. That once the decree is made clear the Plaintiff who has never been asked to honour the decree has no objection to the curving and transfer to the 5th and 9th Defendants respectively;

6. That I have never been approached by the 5th and 9th Defendant's counsel over the subdivision and transfer of the portion the 5th and the 9th Defendant were awarded;

7. That the application cannot be granted in the manner in which it is presented as it is not clear from the decree the acreage to be curved out of the land; and

8. That the decree ought to be amended or rectified first.

9.”

8. Pursuant to directions given on 29th September, 2025 the application was disposed of by way of written submissions.

SUBMISSIONS

Applicant’s submissions

9. In their submissions dated 5th November 2025, the Applicants contend that stated/submitted as follows: -

“...The gist of the instant suit before this Honourable Court resultant in the above application is that judgment was delivered by this Honourable Court on the 22nd November, 2023 in favour of the Applicants herein wherein the Honourable Court decreed that the Applicants are entitled to the portions of

land measuring 0.1 and 0.15 acres respectively, they purchased from that parcel of land known as Uasin Gishu Irong/Mutei/450. The said judgment was delivered in the presence of both parties and parties were granted 90 days to comply accordingly. More than two years however have now lapsed since the delivery of the aforesaid judgment but the Plaintiff/Respondent has absolutely and totally refused to subdivide and execute transfer forms and supply his KRA PIN, ID Copy, Passport size photographs and original title deed in favour of the Applicants herein to enable the smooth transfer of the said portions of land to the Applicants. It is for this reason that the Applicants have filed the instant application seeking for provision of

security to the county surveyor during demarcation exercise and thereafter the Deputy Registrar of the Honourable Court to execute all necessary forms to facilitate formal transfer and the County Land Registrar Uasin Gishu do ensure that the transfer is effected to enable the Applicants enjoy the fruits of their judgment.”

10. Concerning the contention by the Plaintiff/Applicant that the decree is incapable of enforcement because it does not indicate the acreages the Applicants were awarded, the Applicants point out that the Applicants in their statement of defence and counterclaim, claimed 0.1 and 0.15 acres respectively from the judgment property. Terming the issue of the Applicants' entitlement to the suit property clear from the pleadings, the judgment and the decree of the Honourable Court, the Applicants

submit that the issue of the Applicant's entitlement to the suit property is *res judicata*. It is the Applicants' case that this Court, in its judgment delivered on 22nd November, 2023 substantively addressed the said issue after hearing and production of the sale agreements.

11. As to whether the Applicants have made a case for being granted the orders sought, the Applicants submit that they have. In that regard, the Applicants submit that this Court vide its judgment delivered on 22nd November 2023, allowed their counterclaim ordering for specific performance in respect of 0.1 acres and 0.15 acres from the judgment property to the Applicants. The judgment was delivered in the presence of the parties but 2 years have since lapsed.
12. The Applicants maintain that the Respondent has been adamant in transferring the suit parcels to the Applicants thereby denying them the fruits of their judgment.

13. On costs, the Applicants submit that costs follow the event, unless the Court for good reason, declines to grant them.
14. The Applicant urges the Court to exercise its discretion and award costs in their favour.

Respondent's submissions

15. In his submissions dated 7th November 2025, the Plaintiff/Respondent has basically reiterated the averments/contentions contained in his advocate's replying affidavit sworn on 23rd September, 2025. Besides reiterating the averments/contentions in the replying affidavit the Plaintiff/Applicant states/submits as follows:

“...nothing has been presented before this Honourable Court to insinuate the assertion that the Plaintiff has failed, neglected and or refused to comply with the decree of this

Honourable Court. No correspondence has ever been relayed to the Plaintiff and/or her advocate concerning transfer of the portions awarded to the 5th and 7th Defendants. The Plaintiff is ready and willing to implement the decree once it is rectified to avoid ambiguity. It is there the humble submission of the Plaintiff that the application is premature as the amendment to the decree ought to be done first for clarity and the application ought to be dismissed with costs.”

Analysis and determination

16. I have carefully read and considered the case urged by the Applicants in support for their application and the response/explanation given by the Respondent.
17. As rightly pointed by the Respondent, the Applicants have not in their application demonstrated that they

made efforts to execute the decree that was issued in their favour and were derailed or frustrated by the Respondent in their bid to execute the decree issued in their favour.

18. Whilst it is common ground that this Court in its judgment delivered on 22nd November 2022 ordered the Plaintiff/Respondent to transfer to the 5th and the 9th Defendants/Applicants the portions of the suit property they bought from her deceased father, failing which the Deputy Registrar of this Court shall execute the transfer form, that order did not expressly indicate the acreage to be transferred and the timelines within which the Respondent was required to facilitate the transfer.

19. In the circumstances, it was incumbent upon the Applicant to move the execution process. Other than through the instant application, the Applicants have not demonstrated that they approached the

Plaintiff/Respondent with a view of execution of the judgment and/or decree of this Court and the Plaintiff/Respondent refused to comply.

20. In her response to the application, the Respondent has expressed willingness and readiness to comply with orders of the Court provided that the decree issued in favour of the Applicants is rectified and/or amended to explicitly indicate the acreage the Applicants are entitled to.
21. Although the acreages the Applicants are entitled to are discernable from the judgment of this Court delivered on 22nd November 2023, I agree with the Respondent that to bring clarity to the decree of the Court executed in respect of the judgment, it is necessary to amend the decree of this Court to reflect the acreage awarded to the Applicants. Because both parties are in agreement that the awards are clearly discernable from the

judgment of the Court, for purpose of facilitating execution of the judgment and the decree issued in respect thereof, I order that the decree given on 22nd day of November 2023, be rectified on page 2, paragraphs 1 and 2, to read as follows:-

1. The Plaintiff's case succeeds against the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, 10th and 11th Defendants. The Plaintiff's claim against the 5th and the 9th Defendants is dismissed with costs to the 5th and 9th Defendants on the ground that the portions sold by the Plaintiff's deceased father, measuring 0.1 of an acre and 0.15 of an acre respectively did not form part of the free estate of the Plaintiff's father which the Plaintiff could administer as she purported to do.

2. The Plaintiff is hereby ordered to transfer to the 5th and 9th Defendants the portions of the suit

property they bought from her deceased father, measuring 0.1 of an acre and 0.15 of an acre respectively, failing which the Deputy Registrar of this Court shall execute the transfer forms.

22. Upon obtaining the amended decree, the Applicants shall serve it upon the Respondent for compliance. The Respondent is directed to facilitate execution of the decree of this Court by ensuring that the suit property, Irong/Mutei/450 is, within 90 days of service of the amended decree on her, subdivided and the portions sold to the Applicants excised. The Respondent shall within the same time, provide the Applicants with the necessary documents required to facilitate transfer of the excised portions to the Applicants, failing which, the Applicants application herein shall be deemed to have been allowed in the following terms:-

1. The County Surveyor Elgeyo Marakwet County be

and is hereby ordered to carry out subdivision by curving out the portions of the judgment property Irong/Mutei/450, sold to the 5th and 9th Defendants/Applicants' by the Plaintiff/Respondent's deceased father, measuring 0.1 of an acre and 0.15 of an acre respectively, in implementation of the amended decree of this Court issued on 19th February 2026 and the OCS Iten Police Station to provide security to the County Surveyor Elgeyo Marakwet County during the exercise of subdivision of the judgment property.

2. That the Land Registrar Elgeyo Marakwet County to ensure registration and transfer of the resultant new parcels over subdivision of that parcel of land known as Irong/Mutei/450 in compliance with the amended decree of this

Court issued on 19th February, 2026.

3. That the costs of the subdivision and provision of security during the subdivision exercise be borne by the Respondent.

23. The upshot of the foregoing is that the Applicant has not made up a case of being granted the orders sought in the application dated 9th September, 2025 within the first instant. Grant of the orders is denied and/or stayed pending compliance of the directions/orders given by the Court geared towards facilitating execution of the amended decree of this Court given on 19th February, 2026.

24. On costs, I direct that parties bear their own cost of the application.

Dated, signed and delivered virtually at Busia this 19th day of February, 2026 in absence of the parties.

L. N. WAITHAKA

JUDGE

Court Assistant; Tracy

ORIGINAL