



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 171 OF 2013**

**JOSIAH MALIKA NENGANE                      PLAINTIFF/APPLICANTS**

**VERSUS**

**MARY MAREBA MEYA**

**WILLIAM ELONDANGA.....DEFENDANTS/RESPONDENTS**

**RULING**

The application is dated 12th April 2019 and is brought under section 1 (A), 1 (B) and 3A of the Civil Procedure Act seeking the following orders;

1. William Elondanga the 2nd defendant herein be compelled to sign all the necessary documents for the subdivision and transfer of 1.8 acres out of land parcel No. Kisa/Mwikalikha/2013 to Josiah Malika Nengane the plaintiff within such period as this court will deem fair and just.

2. In default the Deputy Registrar of this honourable court be empowered to execute all the necessary documents for the subdivision and transfer of 1.8 acres out of land parcel No. Kisa/Mwikalikha/2013 to Josiah Malika Nengane the plaintiff herein.

3. The costs of this application be provided for. The applicant submitted that, on 24th of July, 2018 this honourable court delivered a final judgment cancelling the title issued to the second defendant and ordering transfer of 1.8 acres to him as more specifically shown by the annexed copy of the decree issued herein marked 'JMN-1'. That he is unable to execute the said decree and therefore enjoy the fruits of the judgment delivered herein in his favour because the second defendant has refused to execute all the necessary documents for the transfer of the land given to him. That it will be in the interest of justice if the court in its inherent powers granted his application herein.

The respondent submitted that the application is premature and the same should not be granted. That the respondents herein were dissatisfied with the ruling of the honourable court and have since preferred an appeal. (Annexed and marked WEM 1 is a copy of Notice of Appeal). That the respondents applied and paid for proceedings on the 22/8/2018, the said proceedings are yet to be supplied. (Annexed and marked WEM 2 is a copy of receipt for payment of proceedings). That the respondents are extremely interested in the appeal and are awaiting the proceedings so that they can proceed and prepare the records of appeal. That allowing the application herein and granting the prayers sought shall render the appeal nugatory. That the applicant testified that he is in occupation of the subject suit, he thus stands to suffer no prejudice if orders sought do await hearing and determination of the appeal. That it is in the interest of justice that this honourable court declines to grant the orders sought to enable the respondents proceed with their appeal.

This court has considered the application and the submissions therein. The application is based on the supporting affidavit of Josiah Malika Nengane as well as the general grounds that, on 24th of July, 2018 this honourable court made a final judgment and issued a decree on 12th of February, 2019 in favour of the plaintiff herein whereby inter alia the title issued in the name of the second defendant as sole proprietor of land parcel No. Kisa/Mwikalikha/2013 was revoked and 1.8 acres thereof was to be transferred to the plaintiff as sole proprietor. The second defendant has to date failed to co-operate and exercise all the necessary documents for the subdivisions and transfer of the portion given to the plaintiff as per the said judgment and decree. It will be in the interests of justice and so as to expedite this orders sought in the applicant herein are granted. The respondent submitted that the application is premature and the same should not be granted. That the respondents herein were dissatisfied with the ruling of the honourable court and have since preferred an appeal. I find that court orders cannot be issued in vain. There is no stay order of the court's decision delivered on the 24th of July, 2018 by this court. I find the application is merited and I grant the following orders;

1. William Elondanga the 2nd defendant is hereby compelled to sign all the necessary documents for the subdivision and transfer of 1.8 acres out of land parcel No. Kisa/Mwikalikha/2013 to Josiah Malika Nengane the plaintiff within the next 14 days from the date of this ruling.

2. In default the Deputy Registrar of this honourable court be empowered to execute all the necessary documents for the subdivision and transfer of 1.8 acres out of land parcel No. Kisa/Mwikalikha/2013 to Josiah Malika Nengane the plaintiff herein.

3. The costs of this application to the applicant.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 23RD JULY 2019.**

**N.A.  
JUDGE**

**MATHEKA**