



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLC NO. E029 OF 2026
(FORMERLY MISC. APPLICATION NO. E274 OF 2025)

WOKI KAMONDE
APPLICANT

=VERSUS=

LIVINGSTONE MUNYUI KINUTHIA**1ST**
RESPONDENT

HARRISON WAGACHA KINUTHIA**2ND**
RESPONDENT

MUNYUI KINUTHIA**3RD**
RESPONDENT

ESTHER KANYI MUNGAI**4TH**
RESPONDENT

RULING

1. By a Notice of Motion dated 27th August 2025, the Applicant seeks the following orders:

i. Spent.

ii. THAT this Honourable Court be pleased to grant leave for the reconstruction of a new court file in respect of High Court Civil Case

No. 3955 of 1993 (O.S), the original having been misplaced by the Registry for a long time.

iii. THAT having allowed the reconstruction of a new file, the Honourable Court be pleased to order and direct the Deputy Registrar of this Court to execute all the necessary documents to transfer parcel number KIAMBAA/RUAKA/T.210 from the 4th Respondent herein ESTHER KANYI MUNGAI to the Applicant herein WOKI KAMONDE.

iv. THAT the costs for this Application be borne by the 4th Respondent herein.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of the Applicant sworn on even date.

THE APPLICANT'S CASE

3. The Applicant averred that on 12th August 1993, he instituted Nairobi High Court Civil Case No. 3955 of 1993 (O.S.) by way of Originating Summons against the Respondents, seeking, inter alia, a declaration that he had acquired title to parcel number KIAMBAA/RUAKA/T.210 by adverse possession and an order for registration in his favour.
4. He further stated that the suit was heard and dismissed by the High Court in its judgment delivered on 8th April 2013. Dissatisfied with the decision, he filed an appeal, being Civil Appeal No. 241 of 2013. He also stated that the Court of

Appeal allowed the appeal, set aside the High Court's judgment, and granted the Originating Summons as prayed, in its judgment delivered on 27th July 2018, with a decree issued on 28th January 2020.

5. The Deponent stated that after the appellate decree was issued, his advocates demanded that the 4th Respondent surrender the original title and sign transfer documents to facilitate the registration of the suit property in his name, but no response was received. He stated that his personal efforts to secure compliance from the 4th Respondent, who is both his neighbour and relative, were unsuccessful.
6. He explained that, due to the 4th Respondent's non-compliance, he took steps to enforce the decree, including preparing an application seeking authority for the Deputy Registrar to execute the necessary transfer documents, but the Court file could not be traced at the registry despite repeated efforts by his advocates.
7. He further averred that his advocates wrote to the Deputy Registrar on 3rd November 2022, requesting assistance in tracing or reconstructing the file. He deposed that the Deputy Registrar responded, stating that a search across registries and archives would first be conducted, but the file has remained untraced despite persistent follow-up.
8. He stated that the file has effectively been lost and can only be recovered through reconstruction. He stated that his advocates possess copies of all relevant pleadings,

proceedings, and the judgment, which have been annexed to assist with such reconstruction.

9. On that basis, the Deponent urged the Court to allow the reconstruction of the file and to authorize the Deputy Registrar to execute all necessary documents to transfer the suit property into his name, in enforcement of the Court of Appeal decree issued on 28th January 2020.
10. Though duly served, the Respondents did not file any response to the application.

ANALYSIS AND DETERMINATION

11. Having considered the application and the affidavit in support thereof, the only issue for determination is whether the Applicant is entitled to the orders sought. The record shows that in Civil Appeal No. 241 of 2013, the Court of Appeal, by its judgment dated 27th July 2018, set aside the decision of the Nairobi High Court in Civil Case No. 3955 of 1993 (O.S) and allowed the Originating Summons as prayed. A formal decree was issued on 28th January 2020. The appellate judgment conclusively determined the proprietary rights over parcel number KIAMBAA/RUAKA/T.210 in favour of the Applicant, thereby creating an enforceable decree in his favour.
12. The record shows that the original High Court file was missing for a considerable period, which hindered the enforcement of the appellate decree. However, this Court, by its order dated 15th September 2025, allowed the

reconstruction of the Court file. Consequently, the procedural barrier to enforcement was removed, and any further delay would lack legal justification.

13. The Applicant now seeks substantive relief to enforce the decree, particularly by executing transfer documents related to the suit property.
14. Under Section 4 of the Appellate Jurisdiction Act and Sections 29 and 30 of the Civil Procedure Act, this Court is vested with jurisdiction to execute decrees and orders of the Court of Appeal as if they were its own.
15. **Section 4 of the Appellate Jurisdiction Act** provides that:

“Any judgment of the Court of Appeal given in exercise of its jurisdiction under this Act may be executed and enforced as if it were a judgment of the High Court.”

16. Further, Sections 29 and 30 of the Civil Procedure Act reinforce this position. Section 29 deems the “court which passed the decree” to include, in the case of appellate decrees, the court of first instance. Section 30, in turn, provides that such a decree may be executed either by the court that issued it or by a court to which it is transmitted for execution. When read together, these provisions confer upon this Court authority to execute the decree arising from the appellate judgment.

17. The Court of Appeal, in its judgment, allowed the Originating Summons in its entirety, in which the Applicant sought the following reliefs:

a. A declaration that the Defendants' rights and/or interest over the plot Number KIAMBAA/RUAKA/T.210 have been extinguished under the Limitations of Actions Act Cap 22 Laws of Kenya on grounds that the Plaintiff herein has been openly peacefully and as of right in occupation of the said plot for a period of over twelve (12) years preceding presentation of this Originating Summons in court.

b. A declaration that the sale and transfer of Plot Number KIAMBAA/RUAKA/T.210 by the 1st, 2nd and 3rd Defendants to the 4th Defendant was null and void ab initio due to the fact that the Plaintiff had at the time of the transaction acquired title over the same plot by way of adverse possession.

c. That there be an Order for the Plaintiff to be registered as the owner/proprietor of Plot Number KIAMBAA/RUAKA/T.210 in place of Esther Kanyi Mungai under Section 38 of the Limitation of Actions Act, Cap 22 of the Laws of Kenya.

d. Costs of this suit be awarded to the Plaintiff.

18. The Court of Appeal's decree contains a positive and executory command requiring the registration of the Plaintiff as proprietor of the suit property.

19. The Plaintiff presented uncontroverted evidence demonstrating that demands were made on the Defendants to facilitate the transfer of the suit property in accordance with the decree, but no action was taken. In the absence of any response or evidence to the contrary, the Court is satisfied that the Defendants have either failed or refused to comply with the decree.
20. Under Section 3A of the Civil Procedure Act, this Court has inherent jurisdiction to issue such orders as may be necessary to serve the ends of justice or prevent an abuse of the Court's process.
21. Further, Section 38 of the Civil Procedure Act provides that a decree may be executed in such manner as the nature of the relief granted may require. In the present case, the nature of the decree necessitates execution through conveyancing processes to transfer the title.
22. Given the Defendants' failure to comply, this Court is entitled to intervene and issue appropriate orders to give effect to the decree. It is a well-established principle that a successful litigant is entitled to the fruits of his judgment.
23. The upshot of the foregoing is that the application dated 27th August 2025 is allowed in the following terms:
 - a. The Deputy Registrar of this court shall execute all necessary documents to transfer parcel number KIAMBAA/RUAKA/T.210 from the 4th Respondent herein, ESTHER KANYI MUNGAI, to the Applicant herein, WOKI KAMONDE.***

b. The costs for this application shall be borne by the 4th Respondent.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF APRIL 2026.

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**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF:

Kimani holding brief for Gichahi for the Applicant

Vena - Court assistant