

**REPUBLIC OF KENYA**  
**IN ENVIRONMENT AND LAND COURT AT MILIMANI**  
**ELCC NO. 7 OF 2023**

ANNAH WANJIRU  
KABURA.....PLAINTIFF/RESPONDENT  
**VERSUS**  
WILSON           SAMUEL           MUNENE.....1<sup>ST</sup>  
DEFENDANT  
FRANCIS                   GITAU                   NGANGA.....2<sup>ND</sup>  
DEFENDANT/APPLICANT  
PETER                   GATHENYA.....3<sup>RD</sup>  
DEFENDANT  
ANNE           NJERI           MUCHENE.....4<sup>TH</sup>  
DEFENDANT

**RULING**

1. Before this court for determination is the notice of motion dated 4<sup>th</sup> June, 2025 filed by the 2<sup>nd</sup> defendant/applicant, and it is expressed to be brought under **Section 80** of the **Land Registration Act**, **Sections 1A, 1B** and **3A** of the **Civil Procedure Act** and **Order 51 Rule 1** of the **Civil Procedure Rules** seeking the following orders:-

***1. Spent.***

***2. That this honourable court be pleased to direct the Registrar of the ELC court to execute such transfer instruments and or documents as shall be necessary to implement the orders of this court given on the 21<sup>st</sup> November, 2024 directing that the Land's***

***Registrar do rectify the Lands Register to reflect the 2<sup>nd</sup> Defendant/Applicant herein as a legal proprietor of all that parcel of land known as Land Reference 12672/73 IR 91087 in the place of the plaintiff herein.***

- 3. That this honourable court be pleased to issue such further orders as it shall deem fit and just in the circumstances of this case.***
- 4. That the cost of this application be provided for.***

2. The application is premised on the grounds on its face. It is further supported by the affidavit of the 2<sup>nd</sup> defendant/applicant sworn on even date. The 2<sup>nd</sup> defendant/applicant deposed that on the 21<sup>st</sup> November, 2024, this court delivered judgment in this matter in which it, *inter alia*, directed that he is the rightful owner of all that parcel of land known as **LR No. 12672/73 IR 91087**. However, upon presenting the decree to the registrar of lands for implementation, he was advised that the register cannot be rectified unless the deputy registrar of this court executes the necessary transfer instruments. The 2<sup>nd</sup> defendant/applicant averred that the deputy registrar on her part can only execute the transfer instruments if this court expressly directs.

3. The application was opposed by the replying affidavit of the plaintiff/respondent sworn on 18<sup>th</sup> September, 2025. She deposed that as demonstrated by the decree, no order was issued to register this property in the name of the 2<sup>nd</sup> defendant/applicant outrightly by the registrar because by the time this suit was finalized, the 2<sup>nd</sup> defendant/applicant never had a title to the property as the same was said to be in the name of ITE Farmers' Co-operative Society Ltd.
4. It was further deposed that the said ITE Farmers' Co-operative Society Ltd was placed under liquidation by the time the suit was finalized and it would then mean any transfer to legally be sound must be executed not by the court but by the official receiver of ITE Farmers' Co-operative Society Ltd. That from the pleadings filed by the 2<sup>nd</sup> defendant/applicant, there was no prayer that the court should execute the transfers, and that the right step to take is for the 2<sup>nd</sup> defendant/applicant to contact the official receiver to have the suit property transferred by ITE Farmer Co-Operative Society Ltd and not through the court.
5. The 2<sup>nd</sup> defendant/applicant filed a further affidavit sworn on

27<sup>th</sup> October, 2025. He deposed that having been declared the rightful owner of the suit property, the aim of this application is to effect the decree. Further, lodging an appeal cannot be a bar to the execution of a valid court decree. He deposed that court orders are not issued in vain, and that the application only seeks facilitation of the decree of the court, noting that the plaintiff/respondent failed to honour the terms and conditions of the stay granted by the court.

6. The application was canvassed through written submissions. The 2<sup>nd</sup> defendant/applicant filed his submissions dated 11<sup>th</sup> March, 2026. The plaintiff/respondent filed written submissions dated 13<sup>th</sup> February, 2026. I have considered the application, the replies thereof and the written submissions filed by the respective parties. The issue for determination is *whether the application has merit.*
7. Judgment in this matter was passed in favour of the 2<sup>nd</sup> defendant/applicant as per the decree of the court issued on 4<sup>th</sup> February 2025, which reads as follows:-
  - a. ***That the plaintiff's suit be and is hereby dismissed.***
  - b. ***That costs of the suit be and are hereby awarded to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.***

**c. That the counterclaim dated the 24<sup>th</sup> September 2020 be and is hereby allowed in the following terms;-**

**i. That a declaration be and is hereby issued to the effect that neither the 2<sup>nd</sup> Defendant nor Ite Farmers' Cooperative Society Ltd executed the sale agreement nor the transfer instrument in favour of Johnstone Njuguna Mwangi, now deceased.**

**ii. A declaration be and is hereby issued that the purported sale agreement, acknowledgement and transfer instrument were fraudulently procured by Johnstone Njuguna Mwangi [now deceased] and by extension the Plaintiff.**

**iii. The certificate of title in respect of L.R 12672/73 (IR 91087) bearing the name of Johnstone Njuguna Mwangi be and is hereby cancelled and revoked.**

**iv. A declaration be and is hereby issued that the suit property L.R No. 12672 lawfully belongs to and is the property of the 2<sup>nd</sup> Defendant (Francis Gitau Ngang'a).**

**v. There be and is hereby issued an order of permanent injunction to restrain the Plaintiff either by herself, agents, servants and anyone claiming under her from entering upon, interfering with and/or in**

***any other manner whatsoever dealing with the suit property L.R No. 12672/73.***

***vi. Cost of the counterclaim be and are hereby awarded to the 2<sup>nd</sup> defendant only.***

***vii. Any other relief not expressly granted is hereby declined.***

**8.** The 2<sup>nd</sup> defendant/applicant contended that orders sought herein are aimed at facilitating the implementation and execution of this court's judgment, which expressly declared him to be the rightful owner of the suit property, L.R 12672/73 (IR 91087). Pursuant to **Sections 1A** and **1B** of the **Civil Procedure Act** as invoked by the 2<sup>nd</sup> defendant/applicant, this court is mandated to facilitate the just and expeditious, resolution of civil disputes governed by the **Act** as it's overriding objective. Reliance was also placed on **Section 80** of the **Land Registration Act Cap 300**, which provides as follows:-

***“Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.***

***(2)The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”***

9. The 2<sup>nd</sup> defendant/applicant has informed the court that he has already attempted to have the transfer effected pursuant to this court’s orders but was directed that the deputy registrar must sign the same for the order to be effected. It would defeat the overriding objective of the **Act** if the court were to deny the 2<sup>nd</sup> defendant/applicant his rightful orders as granted by the judgment and decree.

10. As stated by the court in **B v Attorney General [2004] 1 KLR 431**, thus:

***“The court does not, and ought not be seen to make orders in vain; otherwise the court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”***

11. Further, it is a cardinal principle of law that a successful

litigant is entitled to the fruits of his judgment and he may only be prevented from benefiting as such within the provisions of the law. In **Machira T/A Machira & Co Advocates v East African Standard (No 2) [2002] KLR 63** it was held that:-

*“.....The ordinary principle is that a successful party is entitled to the fruits of his judgment or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse.”*

12. Having fully considered the application and the material on record, this court is satisfied that the notice of motion dated 4<sup>th</sup> June, 2025 is merited and thus necessary to give effect to the decree of the court and enable the 2<sup>nd</sup> defendant/applicant enjoy the fruits of his judgment.

**13.** The notice of motion dated 4<sup>th</sup> June, 2025 is allowed in the following terms:

- i. The deputy registrar of this court is hereby directed to execute transfer instruments and or documents as shall be necessary to implement the orders of this court given on the 21<sup>st</sup> November, 2024 to enable the Land's Registrar to register the 2<sup>nd</sup> defendant/applicant as the owner of LR. No. 12672/73 (I.R No. 91087).***
- ii. I make no orders as to costs.***

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 4<sup>TH</sup> DAY OF MAY, 2026.**

**HON. MBOGO C.G.  
JUDGE  
04/05/2026.**

**In the presence of:**

*Ms. Benson Agunga - Court assistant*

*Mr. Kiarie for the Applicant*

*Mr. Njonjo for the Respondent*

ORIGINAL