



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MOMBASA**

**ELC NO. 197 OF 2017**

**GEORGE STEPHEN MACHARIA NJOROGE .....PLAINTIFF**

**VERSUS**

**ISSA NJAWIRI JABIRI .....1<sup>ST</sup> DEFENDANT**

**STANLEY NDINGURI WANJIRU.....2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....3<sup>RD</sup> DEFENDANT**

**RULING**

**(Applicant seeking orders to amend decree to include an order that he be registered as proprietor of the suit land; judgment having been entered in favour of the applicant; decree extracted; nothing wrong with the decree for it is in tandem with the prayers in the plaint thus cannot be amended; instead a specific prayer for registration of the plaintiff as proprietor of the suit land is made)**

1. The application before court is that dated 17 September 2019. The applicant seeks orders to have the decree issued on 1 August 2019 amended principally to direct the 3<sup>rd</sup> defendant to register the land parcel Kwale/Diani Settlement Scheme/397 into the name of the plaintiff/applicant.

2. In the suit, commenced through a plaint filed on 6 June 2017, the applicant had pleaded that in the year 1978, he was allocated the suit land through the Diani Settlement Scheme. He stated that in March 2015, he found that a title deed had been issued on 17 December 2002 to the 1<sup>st</sup> defendant who later transferred it to the 2<sup>nd</sup> defendant. In the suit, he wished to have cancelled the titles of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. No defence was filed. The case proceeded for hearing and judgment was entered in the applicant's favour. A decree was subsequently issued inter alia directing the 3<sup>rd</sup> defendant to cancel and expunge from its records the title now held by the 2<sup>nd</sup> defendant and another order that the 3<sup>rd</sup> defendant do transfer the said parcel of land to the applicant.

3. In this application, the applicant avers that he cannot be registered as proprietor without a specific court order hence the need to amend the decree to add an order directing the 3<sup>rd</sup> defendant to register him as proprietor.

4. There is already judgment in favour of the applicant vide which the court was satisfied that it is the applicant who deserves to be registered as proprietor of the suit land. It would be pointless for him to have this judgment yet he cannot be registered as proprietor owing to a technicality in the manner in which the decree has been extracted. I cannot however order that the decree be amended for the decree is in tandem with the prayers sought in the plaint meaning that there is nothing wrong with the way the decree is drawn. I am however of the view that a specific order to the Chief Land Registrar, through the District Land Registrar, should suffice to have the applicant registered as proprietor.

5. Having the above in mind, I make the following orders :-

i. That the Chief Land Registrar, through the District Land Registrar, Kwale, does gazette that the title of the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the land parcel Kwale/Diani Settlement Scheme/397 has been cancelled by the judgment of this court and further gazette that through the same judgment it has been held that it is George Stephen Njoroge Macharia, the plaintiff herein, who is entitled to be registered as proprietor of the suit land.

ii. That on expiry of the Gazette Notice, the Chief Land Registrar, through the District Land Registrar, do proceed to register George Stephen Njoroge Macharia as the proprietor of the land parcel Kwale/Diani Settlement Scheme/397 and a title deed be issued to him.

iii. That in the event that there are costs or fees to be incurred for the above, the applicant to pay the same.

6. There will be no orders as to the costs of this application.

7. Orders accordingly.

**DATED, SIGNED and DELIVERED at MOMBASA this 31<sup>st</sup> day of October 2019.**

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**MUNYAO SILA**

**JUDGE.**

**IN THE PRESENCE OF:**

Mr. Odhiambo for the applicant.

Court assistant; David Koitamet