



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

ENVIRONMENT & LAND COURT CASE NO. 82 OF 2015

WILSON KAIGA GIDION GUDAHI

(Suing as the legal representative of the

Estate of the late GIDEON LIVOI GIDEON).....PLAINTIFF

VERSUS

DANIEL LIVOI GIDEON.....DEFENDANT

R U L I N G

On 23rd May 2019 this Court delivered a Judgment in the following terms: -

- 1. The Land Registrar to forthwith cancel the titles to land parcels NO BUNGOMA/KAMAKOIWA/2045, 2046 and 2047 and the same to revert to BUNGOMA/KAMAKOIWA/577.**
- 2. The defendant holds land parcel NO BUNGOMA/KAMAKOIWA/577 in trust for himself, the plaintiff and other beneficiaries.**
- 3. The trust is determined in the following terms: -**
 - (a) The plaintiff to be registered as proprietor of 7 acres out of land parcel NO BUNGOMA/KAMAKOIWA/577.**
 - (b) The defendant to be registered as proprietors of 7 acres out of land parcel NO BUNGOMA/KAMAKOIWA/577.**
 - (c) The remaining portion to be registered in the names of the plaintiff to hold in trust for ROIDA (JOY) JENDEKA MUDULIA and BEN GWAMBELA to be shared equally.**
 - (d) As the parties are family, each to meet their own costs.**

No appeal appears to have been filed against that Judgment. A Decree was extracted on 25th June 2019.

I now have before me the plaintiff's Notice of Motion dated 26th September 2019 brought under the provisions of Section 3 and 3A of the Civil Procedure Act seeking the following orders: -

(a) Spent

(b) That a vesting order do issue to vest land measuring 7 acres to be hived from land parcel number BUNGOMA/KAMAKOIWA/577 in the name of the plaintiff/Applicant herein MR WILSON KAIGA GIDION GUDAHI and a further remaining portion after as well hiving off the defendant/ Respondent's 7 acres from the said land parcel number BUNGOMA/ KAMAKOIWA/577 to be registered in the names of the said MR WILSON KAIGA GIDION GUDAHI the plaintiff/Applicant herein to hold the same in trust of ROIDA (JOY) JENDEKA MUDULIA and BENNAH GWAMBEZA.

(c) That the Deputy Registrar of this Court be authorized to sign all the necessary documents transferring land measuring 7 acres to be hived from land parcel number BUNGOMA/KAMAKOIWA/577 in the name of the plaintiff/Applicant herein MR WILSON KAIGA GIDION GUDAHI and a further remaining portion after as well hiving off the defendant/Respondent's 7 acres from the said land parcel number BUNGOMA/KAMAKOIWA/577 to be registered in the

names of the said MR WILSON KAIGA GIDION GUDAHI the plaintiff/Applicant herein to hold the same in trust of ROIDA (JOY) JENDEKA MUDULIA and BENNAH GWAMBEZA pursuant to the decree of this Court dated 25th June 2019.

(d) That the Honourable Court be pleased to order that the Land Registrar and the County Land Surveyor BUNGOMA COUNTY to visit land parcel number BUNGOMA/KAMAKOIWA/577, conduct a survey thereon and sub-divide the same as per the decree of the Court in this matter dated 25th June 2019.

(e) That the Officer Commanding Station (OCS) Mukuyuni Police Station to provide security during the exercise of the said survey.

(f) That costs of this application be provided for.

The application is premised on the grounds set out therein and also supported by the plaintiff's affidavit dated 26th September 2019.

The gist of the application is that following the aforesaid Judgment, the defendant has refused to sign the relevant documents to facilitate the sub-division and sharing of the land parcel **NO BUNGOMA/KAMAKOIWA/577** as ordered. That a vesting order is necessary to enable the transfer process after survey is carried out by the Land Registrar and Surveyor. The Deputy Registrar of this Court should therefore be authorized to sign the transfer documents on behalf of the defendant and security be provided by the **OCS Mukuyuni Police Station**.

The application was served upon the defendant's counsel **OKILE & COMPANY ADVOCATES** who received it under protest on the ground that the date was not convenient as counsel was engaged in **KITALE HIGH COURT SUCCESSION CAUSE NO 167 OF 2011**. However, I do not see how that prior engagement could prevent counsel from filing a response to the said application or even instruct another advocate to hold his brief. The defendant did not also attend Court and so the application is not opposed.

I have considered the application which is not contested.

As stated above, there was no appeal filed against this Court's Judgment delivered on 23rd May 2019. The plaintiff and the other beneficiaries of the said Judgment cannot enjoy its fruits unless the land in dispute is shared out as directed following the determination of the trust. And since the defendant has refused to sign the relevant documents to facilitate the sub – division of the land in dispute, it is only proper that this Court makes the orders sought by the plaintiff in his Notice of Motion dated 26th September 2019.

The plaintiff's application dated 26th September 2019 is accordingly allowed in the following terms: -

1. The Land Surveyor and Registrar Bungoma to visit the Land Parcel NO BUNGOMA/KAMAKOIWA/577 and sub – divide it into the following:

(a) One portion measuring 7 acres to be registered in the names of the plaintiff.

(b) One portion measuring 7 acres to be registered in the names of the defendant.

(c) The remainder to be registered in the names of the plaintiff to hold in trust for ROIDA (JOY) JENDEKA MUDULIA and BENNAH GWAMBEZA equally.

2. The OCS Mukuyuni Police Station to provide security during the exercise.

3. The Deputy Registrar to sign all the relevant documents on behalf of the defendant to facilitate the vesting orders and transfer.

4. No orders as to costs.

Boaz N. Olao.

J U D G E

21st November 2019.

Ruling dated, delivered and signed in Open Court this 21st day of November 2019 at Bungoma.

Plaintiff present

Defendant absent

Joy/Okwaro – Court Assistants

Boaz N. Olao.

J U D G E

21st November 2019.