



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC MISC 46 OF 2019

FORMERLY CHIEF MAGISTRATE'S COURT LDT NO. 5 OF 2001

CHARLES KABURIA KIUNGA

(Legal Representative of Paul Kiunga.....APPLICANT

VERSUS

JAPHET MWONGO RUCHUGO.....RESPONDENT

RULING

1. This ruling is in respect of the application dated 5.8,2019 where the applicant prays for the following order:

(i) *"This honourable court grant to it a leave to file application to recover a discovered ½ an acre pursuant to approved Land Control Board for transfer dated 2nd July 1987 pursuant to D.O of Miriga Mieru west letter dated 14th day of June 1989.*

(ii) *This Honorable court be pleased to exercise its discretionary powers judiciary and grant an order compelling the land Registrar Meru Central to produce Land control consent approved to transfer ½ acre by cancellation of the name other than the deceased father of the applicant viz:- Paul Kiunga in satisfaction of decree order LDT no. 5 of 2001 in the interest of Justice comprising from L.R No. Nyaki/Kithoka/Mwanika/64.*

(iii) *Further unless ½ an acre is cancelled the name of any person other than the applicant deceased father ½ an acre be transferred to the applicant deceased father name for applicant to take action with title to land being sub-division of L.R No. Nyaki/Kithoka/Mwanika/64 the subdivision of the same be cancelled to affect transfer of ½ an acre to the applicant deceased father".*

2. The grounds in support of the application are set out on the face of the application and there is also a supporting affidavit of the applicant.

3. The application is opposed vide the replying affidavit of the respondent who avers that the application amounts to an appeal against the ruling delivered before the lower court and that the matter is barred by law on limitations. The respondent has availed annexures capturing the history of the dispute before the magistrate's court.

4. It is clear from these documents availed by the respondent that this matter was litigated upon through the Land Dispute Tribunal culminating in the proceedings at Meru Chief Magistrate's court L.D.T No. 5 of 2001 whereby a decree was given on 19.9.2002. it is also apparent that applicant has filed applications before the lower court culminating in various rulings. The applicant cannot therefore extend litigation to this court through a miscellaneous application.

5. I also note that applicant is also seeking prayers against the land registrar Meru central who is not a party in these proceedings.

6. Finally, I note that this is not a suit, yet applicant is seeking such orders as cancellation of subdivisions of the suit land. The applicant ought to file a proper suit with pleadings, so that the defendants therein can be able to respond appropriately if the dispute has not been determined previously.

7. I find that the application dated 5.8.2019 is not merited. The same is dismissed with costs to respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 4TH DECEMBER, 2019.

IN THE PRESENCE OF:-

C/A: Kananu

Gatari R. for respondent

Applicant

HON. LUCY. N. MBUGUA

ELC JUDGE