



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CIVIL APPEAL NO. 227 OF 2013**

**JADIEL KARONGO M'ITHANO.....APPELLANT**

**VERSUS**

**JULIA MUGITO.....RESPONDENT**

**RULING**

1. This matter emanates from a Notice of Motion dated 23<sup>rd</sup> May 2019 where the applicant seeks the following orders:

a) Spent

b) *THAT the Executive Officer of this honorable court do sign all land subdivision and transfer documents in regard to land title No. NYAKI/MULATHANKARI/54 and NYAKI/THUURA/1658 on behalf of JADIEL KARONGO M'ITHANO.*

c) *THAT an order be issued dispensing with the production of title deed to land title No. NYAKI/MULANTHANKARI/54 and NYAKI/THUURA/1658 during subdivision and transfer.*

d) *THAT the Meru Land Registrar be directed to effect subdivision of land title No. NYAKI/MULANTHANKARI/54 and NYAKI/THUURA/1658.*

e) *THAT the OCS Meru Police Station do provide security and ensure compliance of such orders as issued by this Honorable court.*

f) *THAT the costs of this application be provided for*

2. The grounds in support of the application are set out on the face of the application and in the supporting affidavit of Julia Mugito sworn on 23.5.2019. It is contended that the appellant's appeal was dismissed, hence the Suit parcels should be shared equally as per the judgment dated 17<sup>th</sup> November 2014. The appellant has refused to subdivide the land and to transfer the same to the respondent her rightful share.

3. The application was opposed by **Jadiel Kirongo M'ithano** through his replying affidavit sworn on 12<sup>th</sup> July 2019. He deponed that the application is unfounded as he has already shown the applicant her portion which she occupies together with her family and it is where they are now staying. He avers that the parcel of land which they were to share equally was NYAKI/MULATHANKARI/54 of which the applicant was given her share and this is the place where her husband is buried. He contends that for land parcel no. MULANTHANKARI/1658, he bought the same from one M'Imathi Itimitu. He cannot transfer his own land to the respondent and he therefore prays that the application be dismissed with cost.

4. The issue for determination **is the distribution of land parcels NYAKI/MULATHANKARI/54 and NYAKI/MULANTHANKARI/1658.**

5. This matter was initially tabled before the Land Disputes Tribunal whose award was pronounced in open court by the magistrate's court. The award which was adopted as a judgment of the court directed that the two Suit Lands in question Nyaki/Mulathankari/54 and Nyaki/Thuura/1658 be shared between Jadiel Kirongo M'ithano and Julius Gatobu M'ithano equally. The appellant appealed the decision in this court of which the appeal was dismissed vide the judgment dated 17.11.2014.

6. In the course of litigation, the respondent died and was substituted with one Julia Migito. It has emerged that the two initial parties were brothers.

7. From his replying affidavit the appellant is emphatic that the only land the two brothers were to share is parcel no 54. He declared that he gave the respondent her share in Parcel No. 54, while he took Parcel No. 1658 as he alleges that he bought the latter parcel. This is an apparent defiance of the court order, for it was established that the two parcels are family land which should be shared among the appellant

and the respondent's husband. The appellant did not appeal the decision of this court. Therefore, he cannot claim that he bought the land, as the matter has already been adjudicated upon.

8. Furthermore, even for parcel no. 54, there is no evidence that appellant has shared out the land equally with the respondent. The appellant made reference to the document marked "JK1 1" to show that he shared out the parcel no 54 with his brother. However, that annexure still bears the name of the appellant!

9. It is therefore apparent that the appellant is defying the court orders and he cannot claim that applicant (Julia) is unavailable to follow up on the process of subdivision. Ordinarily, having dismissed the appeal of the appellant in this matter, then the implementation of the tribunal award ought to have been carried out before the subordinate court which read the award. However, I take cognizance of the fact that this dispute did not go to the provincial land dispute tribunal as the Act was repealed. Thus, when the matter came before this court, the trial Judge was able to deal with both issues of law and fact and upheld the award of the tribunal.

10. Further, **Article 159 of the constitution** stipulates that justice should be done without undue regard to procedural technicalities. This dispute would be thrown into disarray if the parties were referred back to the magistrate's court for the enforcement of the judgment. This court therefore finds it just and proper that the tribunal award should be implemented.

11. In ***Econet Wireless Kenya Ltd v. Minister for Information & Communication of Kenya & Another*** [2005] 1 KLR 828 Ibrahim J (as he then was) relied on the Court of Appeal decision in ***Gulabchand Popatlal Shah & Another Civil Application No. 39 of 1990 (unreported)***, where it was held:

***"It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors... In HADKINSON v. HADKINSON (1952) 2 All E.R. 567, it was held that: It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void."***

12. The courts do facilitate the administration of justice by giving orders, judgments and decrees which ought to be respected and honoured. If ignored there will be nothing left but people to take law into their own hands, leading to impertinence for courts and obliteration in our society. The appellant cannot purport to have his own interpretation of a court's judgment and order.

13. In conclusion, I find that the application before me is meritorious and I therefore give the following orders:

a) **The Executive Officer of this court is hereby directed to sign all land subdivision and transfer documents in regard to land title No. NYAKI/MULATHANKARI/54 and NYAKI/THUURA/1658 on behalf of JADIEL KRONGO M'ITHANO.**

b) **An order is hereby issued dispensing with the production of title deed to land title No. NYAKI/MULANTHANKARI/54 and NYAKI/THUURA/1658 during subdivision and transfer.**

c) **The consent of the land control board is hereby dispensed with in the aforementioned subdivisions.**

d) **The Meru Land Registrar is hereby directed to effect subdivision of land title No. NYAKI/MULANTHANKARI/54 and NYAKI/THUURA/1658 in equal shares with each portion being registered in the name of JADIEL KIRONGO M'ITHAMO and the other portions in the name of JULIA MUGITO to hold in trust for the estate of JULIS GATOBU M'ITHAMO.**

e) **The OCS Meru Police Station is to provide security and ensure compliance of such orders as issued by this court.**

f) **The Costs of this application are awarded to the applicant to be paid by Jadiel Kirongo**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 3<sup>RD</sup> DAY OF DECEMBER, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Applicant

Karimi Milka (a child of the respondent)

Respondent

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**