



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 427 OF 2014

Formerly NYERI HCC 232 OF 2012

GABRIEL WAHOME WANDERI.....PLAINTIFF

-VERSUS-

JULIUS MWAI MBUTHIA.....1ST DEFENDANT

CHRISTOPHER MURIMI WANDERI.....2ND DEFENDANT

RULING

1. The application dated 14th December, 2017 seeks the following orders:-

(1) That this Honourable court be pleased to authorize the Deputy Registrar of this Honourable court to sign all the necessary documents of subdivision and transfer on behalf of the 1st defendant Julius Mwai Mbuthia to effectuate the court orders of 25th November, 2013 of this Honourable Court.

(2) That the 1st respondent be condemned to pay the costs of this application.

2. The application is premised on the grounds that the 1st respondent has refused and or neglected to sign the necessary transfer documents in compliance with the order of the court issued on 25th November, 2013. The application is supported by the affidavit of Gabriel Wahome Wanderi, where the ground on the face of the application is reiterated.

3. The application is opposed through a replying affidavit sworn by the 1st respondent, Julius Mwai Mbuthia. He acknowledges that parties entered a consent on 3rd October, 2013. He also admits that he has not executed mutation forms but blames the applicant for failing to ensure that the District Land Registrar and District Surveyor visit the locus, set and mark boundaries between parcels No. Mweru/Mukura/1716 and 1717 and make provision for the 5 feet access road.

4. It is not in dispute that the parties herein on 3rd October, 2013 recorded the following consent which was adopted as an order of the court:

1. That the District Land Registrar and the District Surveyor, Kirinyaga District do visit, effect and mark boundary features between L.R. No. Mwerua/Mukure/1716 and L.R. No. Mwerua/ Mukure/1717.

2. That the District Land Registrar and the District Surveyor do provide an access road between L.R. Mwerua/Mukure/2016 and L.R. No. Mwerua/Mukura/1717 continually five (5) feet of the access road.

3. That the plaintiff and the 1st defendant, Julius Mwai Mbuthia do sign the mutation forms.

4. That the parties be at liberty to appoint their own private surveyor during the exercise if they so wish.

5. That the District Land Registrar do open the necessary registration documents for the two parcels of land immediately after the exercise.

6. That the exercise aforesaid be carried on within forty five days.

7. That the matter be mentioned on 25th November, 2013 to confirm compliance.

8. That each party do bear its own costs.

5. In the aforesaid consent order, the court ordered the plaintiff and 1st defendant, Julius Mwai Mbutia, to sign “mutation forms” not “all the necessary documents of subdivision and transfer”. This court is being asked to enforce an order it did not grant. I decline to grant the order as sought and strike out the application with costs to the respondent.

6. However, this court is not blind to the fact that the respondent has admitted that he deliberately refused to sign the mutation forms as ordered by the court. In my view, the respondent is being unnecessarily difficult and is the one stalling conclusion of this matter. The applicant is at liberty to file the appropriate application and seek this court’s assistance in enforcing the order granted by the court.

Orders accordingly.

Dated, signed and delivered in open court at Nyeri this 30th day of May, 2018.

L N WAITHAKA

JUDGE

Coram:

Mr. Wahome Gikonyo for the plaintiff/applicant

Mr. Rurige h/b for P. M. Wachira for the defendants/ respondents

Court assistant - Esther