



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC APPEAL NO.1476 OF 2005 (OS)**

**M N K & ANOTHER.....PLAINTIFFS**

**=VERSUS=**

**S N M & ANOTHER**

**(Administrators of the estate of**

**S M N (DECEASED).....DEFENDANTS**

**RULING**

1. The Plaintiffs/Applicants are children of the late J K N who was a brother to S M N (deceased). The applicants had filed a suit against the deceased seeking adverse possession of LR No.Dagoretti/Riruta/[particulars withheld] (suit property). The suit was later compromised by a consent which was recorded before lady Justice Angawa on 15<sup>th</sup> April 2008 in which it was agreed that the suit property was to be shared equally between the applicants and the deceased.
2. The applicants moved to execute the decree and have title in their names but this has not been possible because the administrators of the estate of the deceased have refused to release the original title to enable the applicants to have their portion registered in their names. This is what prompted the applicants to file the application dated 12<sup>th</sup> February 2016 in which they seek orders of the court that the production of the original title for the suit property be dispensed with.
3. The applicants had obtained orders allowing the Deputy Registrar of this Court to sign consent to transfer documents which directions have been complied with. The applicants therefore seek orders dispensing with the original title to enable their share to be transferred into their names .
4. The respondents have opposed the applicants' application through a replying affidavit sworn on 10<sup>th</sup> May 2017. The respondents are faulting the consent which was recorded on the ground that the deceased was suffering from mental depression and that the consent was recorded after Lady Justice Angawa had rejected an application for adjournment; that the deceased did not sanction the consent, and it will therefore be unfair if the application was allowed.
5. I have considered the applicants' application as well as the opposition to the same by the respondents. There is no doubt that this suit was comprised by a consent way back in 2008. The process of execution has been going on. The only hitch which has been encountered is that the respondents have refused to release the original title.
6. The consent which was recorded has never been set aside. There have been attempts to go round the consent by the respondents making applications to court but these attempts have all failed. I have looked at the submissions by the respondents which seem to raise the issue of the consent. This matter is beyond the consent which settled this case. This case was filed in 2005. Public policy demands that litigation has to come to an end. The only way to end this litigation is by allowing the application dated 12<sup>th</sup> February 2016 to enable the execution process to be completed. I therefore allow the application dated 12<sup>th</sup> February 2016 with the result that production of the original title in respect of Dagoretti/Riruta/[particulars withheld] for purposes of transfer of land into the applicant's name is hereby dispensed with. Costs of this application shall be costs in the cause.

It is so ordered

**Dated, Signed and delivered at Nairobi on this 17<sup>th</sup> day of May 2018.**

**E.O.OBAGA**

**JUDGE**

In the absence of:-

M/s Maloba for Mr Ojienda for Plaintiffs

M/s Kore for M/s Waiganjo for Defendant

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**