

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 230 OF 2017

JOHN SIMIYU PALANGA.....PLAINTIFF (DECEASED)

FRANCIS WAMALWA WERE.....PLAINTIFF/APPLICANT

VERSUS

CHOPKOOE KOSKEI)

LEVI LUVANDALE NANDOYA).....DEFENDANTS/RESPONDENT

RULING

This application is dated 16th May 2018 and is brought under Section 1, 1A, 3, 3A of the Civil Procedure Act, Cap 21 Article 159 of the Constitution seeking the following orders;

1. That this application be certified urgent and heard on priority basis.
2. That the honourable court do authorize the Deputy Registrar and/or Executive officer of this honourable court to sign the transfer forms in respect of L.P. KAKAMEGA/SANGO/82 so as the land can be transferred to the plaintiff in line with the judgment of this court delivered on 5th November, 2015.
3. That the costs of this application be in the cause.

The applicant submitted that, he is aware that the court delivered its judgment in this matter on the 5/11/2015 and ordered that the suit land belongs to him and he should be issued with title deed accordingly. That an order was extracted to that effect. Annexed and marked FWW 1 (a) and (b) are copies of the judgment and the order that was served upon the County Lands Registrar. That the County Lands Registrar vide a letter dated 6/3/2018, has communicated to his lawyer that for the orders to be effected, a duly signed transfer form should be provided to the office. Annexed and marked FWW 2 are copy thereof. That the defendant/respondent has secretly started the process of transferring the land in order to defeat the judgment delivered herein. That it is only prudent and for the best interest of justice that the order sought of empowering the Deputy Registrar and/or Executive officer of the court be allowed to execute and/or sign the transfer forms and all other documents to give effect to the execution and/or enforcement of the orders of the court. That the defendant/respondent is not keen in doing what the court ordered and it is my prayer that the litigation do come to an end so that he can be able to enjoy the fruits of the judgment by granting the orders sought.

The 2nd respondent submitted that he has not secretly began the process of transferring the suit land herein by which reason the said application is scandalous and vexatious. That in any event, the said applicant has not produced any evidence such as would demonstrate to this court that I have indeed secretly began the process of transfer that the process of transfer of land has a paper trail that is public record to be accessed by any interested party such as the applicant and if indeed that was the case, the same could have been accessed at the lands registry and tendered. That the court record speaks for itself and it can demonstrate that he was not directed to do anything and the applicant is not being candid and is rather set on maligning and muddying his name and is not deserving of the orders sought herein.

This court has considered the application and the submissions therein. It is not disputed that, the court delivered its judgment in favour of the plaintiff/applicant on 5/11/2015 where it was ordered that the land subject matter of this suit belongs to the plaintiff and the title deed shall be issued accordingly. The applicant submitted that, the suit land was in the name of the defendant who has failed to handover the same to Land Registrar to carry out its duty. That it is only fair that the Deputy Registrar and/or Executive officer of the court to be empowered to sign the transfer form to enable the land be registered in the plaintiff's name. That the defendant/respondent shall not suffer any prejudice with the granting of the orders sought herein. That this is a 1991 matter and the same ought to be concluded by granting the orders sought so as to bring litigation to an end the plaintiff to enjoy the fruits of judgment. The respondent states he was not do anything. I find that this application has merit and I grant the following orders;

1. That the Deputy Registrar of this court to sign the transfer forms in respect of L.P. KAKAMEGA/SANGO/82 so as the land can be transferred to the plaintiff in line with the judgment of this court delivered on 5th November, 2015.
2. No orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 11TH DAY OF JULY 2018.

N.A. MATHEKA

JUDGE