

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 400 OF 2014

FLORENCE MAKUNGU HARUN

NITAS ACHANGA INGATSO.....PLAINTIFFS/APPLICANTS

VERSUS

STANLEY MAFOLI MUSINDI

SOLOMON MUNYASI ATIANYIDEFENDANTS/RESPONDENTS

RULING

The application is dated 23rd April 2018 and seeks the following orders:

1. That this honourable court be pleased to order the defendants/respondents to surrender in court title deeds subdivided from the whole original L.P. No. Isukha/Lubao/569 in particular; L.P. Isukha/Lubao/2536 and L.R. No. Isukha/Lubao/2537.
2. That upon prayer No. 1 being granted, this honourable court be pleased to release the said title deeds to the applicants herein for purposes of effecting registration.
3. That without prejudice to prayers number 1 and 2 above, this honourable court be pleased to issue a Notice to Show Cause against the respondents herein for them to show why they should not be committed to civil jail for failure to comply with the terms of the decree and/or judgment made on 15th November, 2017.
4. That this honourable court be pleased to grant any other or further orders that it may deem fit and just to grant in the circumstances.
5. That the costs of this application be borne by the respondents.

It is based on the affidavit of Nitas Achanga Ingatso and on the following grounds that despite being served with the court order together with the penal notice, the respondents have failed to comply making this application necessary. That the registrar of lands has been unable to issue new titles without the previous subdivided titles being surrendered. That the respondents have vowed that they will not comply with the terms of judgment of 15th November, 2017 unless this honourable court intervenes on behalf of the applicants. That the applicants are apprehensive if the orders sought are not granted as prayed, the respondents are likely to transfer the subdivided land to third parties in order to frustrate and prevent them from enjoying the fruits of the judgment.

The respondent submitted that they were not aware of the decree and have applied to set aside the said judgement.

This court has considered the application and the submissions herein. The defendants' application to set aside the judgement was dismissed with cost on the 11th July 2018. I find this application has merit and I grant prayer 2 of the application with costs to the applicant. Be that as it may my judgement delivered on the 15th November 2017 was very clear that the defendants' be directed to sign all the documents for the transfer and in default the Deputy Registrar of the court to do so.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 20TH DAY OF SEPTEMBER 2018.

N.A. MATHEKA

JUDGE