



**REPUBLIC OF KENYA**

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

**E.L.C. CASE NO. 1047 OF 2013**

**DEBORAH ACHIENG ADUDA.....1<sup>ST</sup> PLAINTIFF**

**RENE JOHN DIERKX.....2<sup>ND</sup> PLAINTIFF**

**-VERSUS-**

**FLORENCE SEYANOI KIBERA also known as**

**DOROTHY SEYANOI MOSCHION.....DEFENDANT**

**RULING**

The court delivered its judgement on this case on 27/9/2017 and granted an order of specific performance compelling the Defendant to perform her obligation under the sale agreement dated 16/2/2012 by subdividing and excising an acre from L.R. No. 5898/22 and transferring the acre to the Plaintiffs within 30 days of the date of the judgement failing which the Director of Surveys and the Registrar of Titles were to execute all the necessary documents and undertake the excision of an acre from L.R. No. 5898/22 that was to be transferred to the Plaintiffs.

The court delivered a ruling on 28/6/2018 dismissing the Defendant's application seeking to set aside judgment and stay of execution.

The Plaintiffs filed the application dated 30/10/2018 seeking to have the Deputy Registrar of the Environment and Land Court, Nairobi sign and execute the documents sent to the court by the Director of Surveys vide the letter of 8/10/2018 including the survey plan, the scheme plan and the surveyors report. The application is supported by the affidavit of the 1<sup>st</sup> Plaintiff in which she depones that the Director of Surveys has taken the position that the documents he prepared must be endorsed by the Registrar of the Court before he finalises the subdivision process. He annexed copies of the documents forwarded by the Director of Surveys including the survey computations.

The Defendants advocate swore the replying affidavit in opposition to the application. The gravamen of the Defendant's arguments is that the Defendant has an arguable appeal and should be allowed to canvas it before the Court of Appeal that if the instant application is allowed, it will render the appeal nugatory.

The court has considered the application and the replying affidavit as well as the submissions of counsel. No orders to stay the execution of this court's judgement have been issued by the Court of Appeal. The court is therefore inclined to allow the application. In the event that the appeal is successful, the Court of Appeal can direct the land sought to be excised measuring one acre be given back to the Defendant.

**Dated and delivered at Nairobi this 6<sup>th</sup> day of December 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Ms. Mathenge holding brief for Mr. Oyomba for the Plaintiffs

Ms. Oriwo holding brief for Mr. Miyare for the Defendant

Mr. V. Owuor- Court Assistant