



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

HCC NO. 342 OF 1982

FESTUS THIMU KABUGUPLAINTIFF/APPLICANT

-VERSUS-

NGIHI NGARIDEFENDANT/RESPONDENT

RULING

1. The application before me is dated **30th January, 2017** brought under **Order 51 Rule 1** of the Civil Procedure Rules (CPR), and **Sections 1(a), (b) and 3A** of the Civil Procedure Act (CPA).
2. It seeks that this Honourable court does authorise the Deputy Registrar to execute transfer documents on behalf of the defendant herein in respect of title number Gikondi/Thimu/857 so as to give effect to the orders issued by this court on 6th November, 1985.
3. The application is premised on the grounds on its face and is supported by the affidavit sworn by Festus Thimu Kabugu on **30th January, 2017**. In that affidavit, the applicant depones that the court on 6th November, 1985 issued an order that the defendant transfers a portion measuring 2.30 acres out of Gikondi/Thimu/470 to the plaintiff (now deceased). The defendant did not comply with the order and in 2005, he subdivided the original parcel No. 470 into resultant parcels 857 and 858 and had both parcels registered in his name. He never transferred any of the parcels to the plaintiff until he died in 2013. The applicant (who holds letters of administration *ad litem* to the estate of the plaintiff (his late father)), has approached the defendant many times urging him to transfer parcel No. 857 to him, but the defendant has refused and/or failed to do so. He now prays that this court orders the Deputy Registrar to sign the relevant documents to facilitate a transfer of parcel No. Gikondi/Thimu/857 in his name.
4. The application is not opposed. Vide an affidavit of service sworn on 6th March, 2017 and filed on even date, the process server, Samuel Wachira Mbutia depones in paragraph 3 that he effected service upon the defendant personally on 4th March, 2017 who accepted service but declined to append his signature on the copies.
5. A perusal of the court record reveals that an order was issued by **Patel, J** on 24th February, 1986 as follows:

“Judgment is entered in terms of the award that; The land parcel No. Gikondi/Thimu/470 be divided into two (2) parts and each to have the following acreage;

- 1. Kabugu Ngari – 2.3 acres**

2. Ngugi Ngari – 2.3 acres

Each party to bear their own costs”.

6. Despite the above order having been issued, the defendant failed to execute the judgment of the court as ordered prompting the plaintiff to file a chamber summons application on 17th March, 1986 praying that the executive officer of this court be ordered to execute all the necessary documents in place of the respondent for a portion of 2.3 acres out of Gikondi/Thimu/470 in favour of the plaintiff.

7. This application was allowed on 15th May, 1986 in the following terms;

“I observe that the application for review was dismissed by Patel J. on 17th January, 1986 and no appeal has been filed. Consequently, I grant this application and order that the executive officer of this court may execute the necessary documents of transfer of Gikondi/Thimu/470 to the applicant/ plaintiff”.

8. From the documents found in the court record, this court can discern that the executive officer signed all the necessary documents as ordered by the court. I say this because I have come across 2 application forms for consent to the Land Control Board both signed by the executive officer on 3rd October, 1986 and 13th April, 2005.

9. After this, all went quiet until 8th November, 2016 when the applicant filed an application to be substituted in place of his father (plaintiff) on 7th November, 2016. Although the applicant offered no explanation why his father did not execute the judgment as granted or present the documents signed by the executive officer to the Land office for processing of a title deed in his name, the said application was allowed as prayed.

10. As stated in paragraph 8 of this Ruling, the second application form to the Land Control Board was signed by the executive officer in the year 2005, the same year when the title deeds for parcels No. 857 and 858 were issued. The above activities having taken place in the same year, I will take it that in the year 2005, the defendant finally decided to execute the judgment as ordered by the court in 1986.

11. Execution having taken place in the year 2005, I find that the applicant has not been caught up by the 12 year Limitation period provided for under **Section 4 (4)** of the Limitation of Actions Act within which execution for delivery of property must be done.

13. Accordingly, I allow prayer (2) in the instant motion, but this being family land, I order that the transfer documents executed in favour of the applicant to clearly state that the applicant holds the suit property in trust for the estate of Kabugu Ngari.

14. The application being undefended, no orders on costs are made.

Dated, signed and delivered in open court at Nyeri this 20th day of March, 2017.

L N WAITHAKA

JUDGE

In the presence of:

Mr. Kimunya for the plaintiff/applicant

N/A for the defendants

Court clerk - Esther