



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 132 OF 2014

SIMON PKITE CHEMOLTOR..... PLAINTIFF

VERSUS

WILLIAM LOISHAKOU..... DEFENDANT

R U L I N G

The application dated 10/2/2017 seeks the following orders:-

- a. That this Honourable Court be pleased to issue a vesting order unto the plaintiff/decree holder ownership of 6(six) acres of land comprising in Land Parcel No. West Pokot/Siyoi/518 per this Honourable Court and decree herein.**
- b. That this Honourable Court does order the defendant/judgement debtor to sign transfer documents for the said 6 acres of land in favour of the plaintiff/decree holder and in default the Deputy Registrar of this Honourable Court be ordered to execute the same on behalf of the defendant judgement/debtor.**
- c. That costs of this application be provided for.**

In the grounds at the foot of the application it is stated that the judgement debtor has “totally refused” and/or neglected to sign the relevant transfer documents which refusal/neglect is calculated to defeat this courts judgement. The affidavit in support of the application is brief; it states that the judgement debtor’s acts of refusing to vacate the said land despite the said judgement are calculated to defeat this court’s said judgement and decree. It reiterates the ground that the defendant/judgement debtor has since the date of judgement to date refused to sign the relevant transfer forms.

The application is opposed on three general grounds. At the hearing however the counsel for the respondent urged that the respondent has not refused to sign the documents. She said that no documents are attached to the affidavit in support of the application. She said it should not merely be submitted by word of mouth that the defendant/respondent has failed to execute the documents.

When asked by the court to show what the defendant/respondent had on his part done to further the implementation of the judgement the counsel responded that the defendant/respondent had been visiting the land registry for the purpose. Sadly this is also an oral statement from the bar and it does not shed light on the part of defendant has played in implementation of the judgement. The defendant/respondent should have sworn a replying affidavit.

The court was categorical in its judgement that if the defendant does not transfer the six acres to the plaintiff the Deputy Registrar is authorized to sign all documents to ensure that the six acres are

transferred to the plaintiff. In my view, the words “does not” do not necessarily envisage the willful refusal of the defendant only, but any other circumstances in which the defendant has failed or neglected or been unable to transfer the land as required by the judgement. An inquiry into whether the defendant has willfully refused is futile in this case.

The absence of a replying affidavit to the application, and the making of the application before court, are evidence that the defendant has not transferred the six acres to the plaintiff as required by the judgement. No other evidence is necessary to prove that fact.

Litigation must at some point come to an end. That was the very purpose of including the Deputy Registrar’s role in the judgement in this case.

I grant prayers Nos. (a) and (b) of the application dated 10/2/2017. The costs of the application shall be borne by the defendant/respondent. It is so ordered.

Dated, signed and delivered at Kitale on this **13th** day of **March, 2017**.

MWANGI NJOROGE

JUDGE

In the presence of:

Ms. Mwemeke or the Applicant

N/A for the Respondent

Court Assistant – Isabellah.

MWANGI NJOROGE

JUDGE

13/3/2017