



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 50 OF 2012**

**NDIEMA KIRUI TOBOSWA.....PLAINTIFF**

**VERSUS**

**ENES N. WAFULA.....DEFENDANT**

**R U L I N G**

1. The defendant brought an application dated **14/3/2017**. The defendant sought the following orders:-

**(1) That the plaintiff/respondent be ordered to surrender the original title deed for Land Parcel No. Trans-Nzoia/Maridadi/118 to the defendant/applicant.**

**(2) That in default thereof the same be treated as cancelled and the Land Registrar, Trans-Nzoia be directed to issue a fresh title for Land Parcel No. Trans-Nzoia/Maridadi/118 in favour of the defendant/applicant.**

2. In his grounds at the foot of the application the defendant stated that the plaintiff has refused to transfer the land to the defendant and the plaintiff had the original title deed in his possession.

3. The background against which this application is made is as follows:-

The plaintiff sued the defendant for eviction order in respect of LR. No.Trans-Nzoia/Maridadi/118 which is registered in his name; the court found that there was a land exchange agreement between the plaintiff and the defendant's deceased husband in respect of four acres of land; the court found that the plaintiff's suit against the defendant could not stand and that the plaintiff has not proved his case to the required standards, that he had brought the case against a party with no capacity and the case is statute barred. The suit was dismissed with costs. The court found that the plaintiff's claim is caught up by limitation and that it cannot stand.

4. The plaintiff was served with the application currently under consideration. The affidavit of service sworn by one George Mumali, a process server, is filed in court. This affidavit shows that the plaintiff was served, yet he did not file a response to the application made against him. The application is therefore unopposed.

5. At this juncture however the question as to whether the defendant has capacity to make the application she has brought arises. The court found that the defendant is not the administrator of the Estate of her deceased husband and that the plaintiff could not sustain the suit against her for her lack of capacity. The question as to whether she would have been entitled to the prayers sought had she annexed any evidence of capacity to the affidavit in support of the application is a question for another day. For now, this court finds that it would probably amount to double standards to uphold her application while the main suit

against her was dismissed for her lack of capacity. Besides this point, the defendant has not demonstrated that the orders that she seeks now are in any way related to the defence if any she filed in the suit or any prayers that she urged upon the basis of such defence.

6. For these reasons the application dated 14/3/2017 is hereby dismissed. There shall be no orders as to costs.

Signed, dated and delivered at Kitale on this 29<sup>th</sup> day of **May, 2017**.

**MWANGI NJOROGE**

**JUDGE**

**29/05/2017**

Before - Mwangi Njoroge Judge

Court Assistant - Isabellah

Lowasikou holding brief for Arunga

N/A for the Respondent

Ruling read in open court. Application dismissed. No orders as to costs.

**MWANGI NJOROGE**

**JUDGE**

**29/05/2017**