



**Muyesi v Boit & another (Environment and Land Appeal  
8 of 2014) [2024] KEELC 32 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 32 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL 8 OF 2014  
EO OBAGA, J  
JANUARY 18, 2024**

**BETWEEN**

**JOSEPH NDAYALA MUYESI ..... APPLICANT**

**AND**

**THOMAS KIMUTAI BOIT ..... 1<sup>ST</sup> RESPONDENT**

**JOSIAH KIMBUR KIBIAS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a notice of motion dated 2.10.2023 in which the Applicant seeks the following orders: -
  1. Spent
  2. Spent
  3. That the Deputy Registrar of this Honourable court do execute and/or sign all the requisite documents to facilitate formal transfer of the entire parcel of land known as Uasin Gishu/ Illula/126 pursuant to a decree of this court dated 11<sup>th</sup> July, 2018 and the County Land Registrar, Uasin Gishu do ensure that the transfer is effected.
  4. That the 2<sup>nd</sup> Respondent herein be evicted from the suit property herein, Uasin Gishu/ Illula/126, with the assistance of OCS Kapsoya Police station by providing security to the appellant during the eviction in implementation of the judgment and decree of the Honourable court.
  5. Costs be provided for.
2. The Applicant had filed a suit against the Respondent in the lower court seeking among other prayers specific performance of an exchange agreement. The Applicant lost the case and he preferred an appeal



- to this court. In a judgment delivered on 11.7.2018, the Applicant's appeal succeeded and he was granted all the prayers in his plaint before the lower court.
3. The Respondents appealed against the judgment of this court to the Court of Appeal. On 9.7.2021, the Court of Appeal delivered a judgment in which the Respondents appeal was dismissed with costs.
  4. The Applicant contends that the Respondents have been unwilling to execute the necessary documents to facilitate the transfer of the exchanged plot into his name. It is on this basis that the applicant is seeking the orders as per paragraph 1 hereinabove.
  5. The Respondents opposed the Applicant's application based on a replying affidavit sworn on 30.10.2023. The Respondents contend that the suit property measures 7.41 acres whereas the Applicant was seeking 5 acres and that this court cannot grant prayers which were not contained in the plaint and that the Applicant has deposed to blatant lies and therefore underserving of any equitable reliefs.
  6. I have considered the Applicant's application together with the opposition to the same by the Respondents. I have also considered the submissions by the Applicant. The Respondents had been given 7 days to file their submissions with effect from 6.12.2023. as at 20.12.2023 when writing this ruling, the Respondents had not filed their submissions.
  7. The Applicant is merely seeking enforcement of the judgment in his favour. The Respondents have refused to co-operate in signing the necessary documents to enable the Applicant have his land which he exchanged with the Respondents. The Respondents have lost their appeal before the Court of Appeal. Section 98 of the [Civil Procedure](#) mandates this court to nominate someone to sign necessary documents to give effect to its judgment.
  8. Section 98 of the [Civil Procedure Act](#) provides as follows:-

“Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”
  9. It is clear that the Respondents have neglected to sign the necessary documents to enable the Applicant to be registered as owner of the exchanged land. In the circumstances, the court is not left powerless. It has to move in accordance with section 98 of the [Civil Procedure Act](#). This has been the position in the cases of [Mukoma Kimaru v Johnstone Muchomba Kagunya](#) (2020) eKLR, [Mary Wairimu Gakere v Muiruri Raphael Njuguna](#) (2020) eKLR and [Catherine Waitihira Mande v Gervas P. Mwangi](#) (2016) eKLR.
  10. The Respondents are contending that the Applicant was seeking 5 acres but that the land he is seeking is 7.41 acres. This was a case of an exchange of land. The exchange was for the entire land. The issue of whether the Applicant wanted 5 acres or not is not open for litigation. This issue arose before the Court of Appeal and it was resolved with finality when the judges at paragraph 23 found that the trial judge had considered the application for consent of the Land Control Board in finding that the exchange was for the entire land.



11. Another issue raised is that there was no prayer for eviction in the prayers in the plaint before the lower court. The courts have found that the suit property belongs to the Applicant. The Respondents cannot be left to remain on the property. The only logical conclusion is that an eviction order should issue. I therefore find that the Applicant's application is well merited. The same is allowed in terms of prayers (3) (4) and (5).

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18<sup>TH</sup> DAY OF JANUARY, 2024.**

**E. OBAGA**

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**JUDGE**

I certify that this is a true copy of the originally

Signed

**DEPUTY REGISTRAR**

In the virtual presence of;

M/s Kibet for Mr. Kibii for decree holder.

M/s Kimeli for Mr. Tororei for respondent.

Court Assistant –laban

