



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC MISC APPL. NO. 17 OF 2017

DAVID GICHURU MUGAMBI.....PLAINTIFF

VERSUS

JULIUS MUGAMBI SADI.....1ST DEFENDANT

MORRIS MUGAMBI KIRAGU.....2ND DEFENDANT

RULING

1. The Notice of Motion dated 20th June 2017 seeks the following orders:-

1. Spent.

2. The Honourable Court be pleased to commit the respondents to civil jail for disobeying the Honourable Court's Orders of 26/8/2015 and order the Land Registrar, Meru to dispense with production of the original title deeds for Nyaki / Kithoka/2584 and have the two suit parcels transferred and registered to the applicant in accordance with the Honourable Court's Judgment in Meru CM LDT Case No. 92 of 2004.

3. The Honourable Court do make any and or further order in the interest of justice.

4. Costs of the application be paid to the applicant by the respondents.

2. The application is based on the following grounds:-

(a) The Chief Magistrate's Court Meru had delivered judgment between the applicant and the respondents in Meru CM LDT No. 92/2004 requiring the respondents to be deregistered as proprietors to the suit lands and for the said suit lands to be registered to the applicant as the sole lawful registered owner.

(b) The respondents have all along refused to execute transfer documents in accordance with that judgment of the Honourable Court.

(c) Instead, the respondents in total contravention of the said judgment have lodged cautions on the suit lands thereby hampering implementation of the Honourable Court's Judgment and decree in Meru CM LDT No. 92/2004.

(d) That the applicant has suffered loss and damage due to the respondent's failure and utter refusal to abide by the Honourable Court's decree in Meru CM LDT No. 92/2004.

(e) That the Honourable Court's decree need not go in vain.

(f) That it is in the interest of justice that the orders sought be granted.

3. Applicant has also sworn an affidavit dated 20.6.17 where he has reiterated the grounds in the application.

4. Service was effected but there is no response.

5. I find that applicant has not been candid as he has failed to disclose the existence of the Judicial Review Misc. Suit No. 52 of 2008 where he was the Interested Party whereas the present respondents were the ex-parte applicants. In a judgment delivered on 10.05.17, in Judicial Review Case, this Court had quashed the decision of Provincial Dispute Tribunal Committee No. 60 of 2004 filed in Chief Magistrate's Court as LDT NO. 92 OF 2004.

Having quashed, the order of 4.7.15 in Chief Magistrate's LDT No. 92 of 2004, then the same doesn't exist and it is not enforceable.

The application is unmerited and the same is hereby dismissed.

DELIVERED, DATED AND SIGNED AT MERU THIS 24TH DAY OF OCTOBER, 2017 IN THE PRESENCE OF:-

CA: Janet

Miss Mammu h/b for Ndubi for applicant present

Hon. L.N.MBUGUA

ELC JUDGE