



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**HCC NO.12 OF 2010**

**SIMON NG'ANG'A NJOROGE .....PLAINTIFF**

**VERSUS**

**DANIEL KINYUA MWANGI.....DEFENDANT**

**RULING**

***(Application to dispense with production of original certificate of title before registration of plaintiff as proprietor; plaintiff having successfully sued defendant for certain land; defendant having the title deed but refusing to surrender it to the plaintiff for plaintiff to be registered as proprietor; application allowed)***

1. In this suit, the plaintiff claimed to be entitled to ownership of the land parcel Nyandarua/Kitiri/5558 which land was registered in the name of the defendant. In a judgment read on 30 January 2015, my predecessor, Waithaka J, allowed the plaintiff's suit and declared that the plaintiff is entitled to ownership of the suit property.
2. Through an application dated 18 December 2015, the plaintiff sought orders to have the Deputy Registrar execute all instruments required to enable the transfer of the property to himself. I allowed that application on 8 March 2015.
3. The plaintiff has now filed another application dated 19 September 2016. In this application, he seeks orders that the Land Registrar Nakuru be directed to dispense with the production of the original title deed in respect of the suit property which he requires before proceeding to register the plaintiff as proprietor. The plaintiff has explained that the original title deed is in the hands of the defendant who has adamantly refused to surrender the same to the plaintiff to facilitate the transfer. That is the reason that he now asks for orders that production of the original title deed be dispensed with.
4. I have considered the application and looked up at the law. Section 31 of the Land Registration Act, 2012 provides as follows: -

*Production of certificate.*

***31. (1) If a certificate of title or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and, if the certificate of title or the certificate of lease shows all subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate of lease.***

(2) *Where the disposition is a transfer, the certificate shall, when produced, be cancelled, and in that case a new certificate may be issued to the new proprietor.*

(3) *Where the disposition is a charge, the certificate shall be delivered to the chargee.*

5. I am also aware of Section 33 of the Land Registration Act, which deals with lost or destroyed certificates. It states as follows :-

*33. (1) Where a certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a duplicate certificate of title or certificate of lease, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate of title or certificate of lease.*

*(2) The Registrar shall require a statutory declaration to be made by all the registered proprietors, and in the case of a company, the director, where property has been charged, the chargee that the certificate of title or a certificate of lease has been lost or destroyed.*

*(3) If the Registrar is satisfied with the evidence proving the destruction or loss of the certificate of title or certificate of lease, and after the publication of such notice in the Gazette and in any two local newspapers of nationwide circulation, the Registrar may issue a duplicate certificate of title or certificate of lease upon the expiry of sixty days from the date of publication in the Gazette or circulation of such newspapers; whichever is first.*

*(4) If a lost certificate of title or certificate of lease is found, it shall be delivered to the Registrar for cancellation.*

*(5) The Registrar shall have powers to reconstruct any lost or destroyed land register after making such enquiries as may be necessary and after giving due notice of sixty days in the Gazette.*

6. The issue at hand is not a lost or destroyed certificate; it is the defendant who has refused to deliver the certificate. A look at Section 31 shows that the Registrar may dispense with the production of the original certificate, although generally, the original needs to be produced for him to proceed to register the disposition. I think we are dealing with a unique circumstance where a person who has lost a case, now wants to make it difficult for the successful party to procure registration in his name.

7. I think it is only fair that I order the Land Registrar to dispense with the production of the original certificate before proceeding to register the plaintiff as proprietor of the suit property. I further direct the Land Registrar to issue to the plaintiff a fresh certificate showing the plaintiff as proprietor of the suit property. The register should reflect this. It should also reflect that the defendant's title has been cancelled by a judgment of this court and that the plaintiff has been declared proprietor by the same judgment. The application is allowed on the above terms. The plaintiff shall also have the costs of this application as against the defendant.

8. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 13th day of October 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of : -**

Ms. Gitau present for applicant

No appearance on part of respondent

Court assistant: Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**