



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KERICHO

E.L. CASE NO. 79 OF 2001

KIBILIO CHUMO-----PLAINTIFF

VERSUS

PAUL CHERUIYOT KOSKE & 3 OTHERS-----DEFENDANTS

R U L I N G

(Application to have Deputy Registrar execute forms to effect the decree; application allowed)

This suit was commenced by way of Originating Summons filed on 11 October 2001. The claim was one of adverse possession for 2.5 acres out of the land parcel Kericho/Kipchimchim/1011. The suit was defended and by consent referred to arbitration. The arbitrator's award is dated 24 April 2006. In it, the arbitrator was satisfied that the plaintiff has proved that he has acquired a portion of land measuring about 2 acres out of the suit property by way of adverse possession. There followed an application to set aside the award but the same was dismissed by An'gawa L.J on 5 November 2009. In essence the award was affirmed as the judgment of the court. A notice of appeal was filed on 6 November 2009 but I have not seen any evidence of an appeal having been filed.

Through an application dated 16 October 2014, the plaintiff seeks orders to have the Deputy Registrar ordered to execute the mutation forms and transfer 2 acres out of the suit property to the plaintiff. The reason given is that the defendants have refused or neglected to execute the necessary forms to have the 2 acres excised from the suit property and transferred to the plaintiff.

The defendants did not file any replying affidavit to oppose the motion. However, Mr. Ong'anyi, learned counsel for the defendants sought an adjournment at the hearing of the motion which I denied. Mr. Caleb Koech for the applicant urged me to allow the application.

I have considered the same. The plaintiff already has judgment in his favour. It was ordered that the plaintiff is entitled to 2 acres of the suit property. The defendants have refused to transfer this portion to the plaintiff. As far as I can see, no appeal has been filed. Neither is there any order staying the execution of the decree. So that the decree may be effected, I do allow the application and order the Deputy Registrar to execute all forms required to have the 2 acres excised from the land parcel Kericho/Kipchimchim/1011, and transferred to the plaintiff. The defendants shall bear the costs of this application.

It is so ordered.

DATED, DELIVERED & SIGNED AT KERICHO THIS 26TH DAY OF JUNE 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of:

Mr Caleb Koech for plaintiff/applicant.

N/A for M/s S.G. Ong'anyi for defendants/respondents.

Court Assistant F. Juma.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT.