



**Kishau & 2 others v Kiambu Nyakinyua Farmers Company Limited (Environment & Land Case 457 of 2017) [2024] KEELC 3469 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3469 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE 457 OF 2017  
CG MBOGO, J  
APRIL 30, 2024  
IN THE MATTER OF LAND PARCEL NO. L.R. NO. 378/2  
NAIVASHA  
AND  
IN THE MATTER OF SECTION 38 OF THE LIMITATION OF  
ACTIONS ACT CAP 22, LAWS OF KENYA**

**BETWEEN**

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**MUTETE OLE KISHAU ..... 1<sup>ST</sup> PLAINTIFF  
SIMON SAITOTI LEKOORA ..... 2<sup>ND</sup> PLAINTIFF  
MINTENGAAYU OLE SOPIA ..... 3<sup>RD</sup> PLAINTIFF  
AND  
KIAMBU NYAKINYUA FARMERS COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. Before this court for determination is the Notice of Motion Application dated 4<sup>th</sup> May, 2023 filed by the plaintiffs. The application was filed on 15<sup>th</sup> May, 2023 and it is expressed to be brought under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Section 17 and 38 of the *Limitations of Actions Act*, Section 21 of the *High Court (Organization and Administration) Act* No. 27 of 2015 seeking the following orders: -

1. That the Deputy Registrar of this court be hereby authorized to sign all the necessary documents for effective transfer of the suit property to the plaintiffs together with all the persons whose names are set out in the schedule attached to this suit.



2. That the costs of this application be provided for.
2. The application is premised on the grounds that judgment was delivered on 8<sup>th</sup> July, 2019 in favour of the plaintiffs, and a decree was issued by this court on 17<sup>th</sup> April, 2023. Further, that the decree was to the effect that the plaintiffs be registered as the proprietors of the parcel of land known as L.R. No. 378/2.
3. The application was supported by the affidavit of the 2<sup>nd</sup> plaintiff sworn on even date. The 2<sup>nd</sup> plaintiff deposed that judgment was delivered in this matter on 8<sup>th</sup> July, 2019 in their favour, with the orders that the plaintiffs be registered as the proprietors of the land in place of the defendant company.
4. He deposed that it is in the interest of justice that the Deputy Registrar signs the transfer documents to enable the property be registered in their names, together with all the persons whose names appear in the schedule attached to the suit. He went on to depose that neither party will suffer prejudice if the orders are granted.
5. On 6<sup>th</sup> March, 2024, this court gave directions as to the disposal of the application. The defendant did not file any response to the application and neither did any party file written submissions to canvass the application.
6. Be that as it may, I have considered the application and in my view, the issue for determination is whether it is merited.
7. In a judgment delivered by this court on 8<sup>th</sup> July, 2019, the court granted the following orders as reproduced hereunder: -

“The upshot of the above is that the plaintiff has proved his claim on adverse possession to the required threshold and I accordingly allow the originating summons dated 16<sup>th</sup> February, 2001 as follows;

- a. A declaration be and is hereby made that the plaintiffs together with all the persons whose names are set out in the schedule attached to this suit have become entitled by adverse possession of over twelve (12) years All That piece registered under the *Registration of Titles Act* Chapter 281 of the Laws of Kenya and comprised in Title Number L.R. No. 378/2 measuring approximately 4875 acres and situate in Naivasha.
  - b. Consequently, an order is hereby made that the said plaintiffs be registered as the proprietors of the said parcel of land namely L.R. No. 378/2 in the place of the above named Kiambu Nyakinyua Farmers Company Limited in whose name the said parcel of land is registered.
  - c. Costs of this suit to be borne by the defendant.”
8. The plaintiffs further obtained a decree dated 17<sup>th</sup> April, 2023 and it is apparent that there is need for execution. Section 98 of the *Civil Procedure Act* which 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 documents, or to endorse any negotiable instrument, the court may, on such terms and conditions, 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. In the case of *Charles Mukoma Kimaru versus Johnstone Muchomba Kaguya* [2020] eKLR it was held;

“20. It has now emerged that after the judgment of the court that the respondent with a view to defeat the execution of the judgment has refused and/or neglected to sign the relevant transfer documents which refusal/neglect is calculated to defeat this court’s judgment. The only way the judgment and decree of the court can be effected is by authorizing the Deputy Registrar to sign all instruments of transfer of land to the applicant in place of the respondent within the confines of the law as provided for.”

10. From the application and by a reading of the judgment of the court delivered on 8<sup>th</sup> July, 2019, I am satisfied in the circumstances that this is a proper case in which the court should exercise its discretion under Section 98 of the *Civil Procedure Act*. There is no reason advanced why this court should not grant the prayers sought by the plaintiffs. As such, the Deputy Registrar of this court is hereby authorized to sign all the necessary documents for effective transfer of the suit property to the plaintiffs together with all the persons whose names are set out in the schedule attached to this suit. I make no orders as to costs. It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 30<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. MBOGO C.G.**

**JUDGE**

**30/04/2024.**

**In the presence of: -**

Mr. Meyoki Pere – C.A

