



**Omolo v Akinyi & another (Land Case 193 of 2017)  
[2024] KEELC 4364 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4364 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
LAND CASE 193 OF 2017**

**E ASATI, J  
MAY 30, 2024**

**BETWEEN**

**ALPHONCE O. LUMUMBA OMOLO ..... APPLICANT**

**AND**

**BEATRICE AGENGO AKINYI ..... 1<sup>ST</sup> RESPONDENT**

**LUCY JUMA AGENGO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 15<sup>th</sup> March 2023 stated to be brought pursuant to the provisions of section 1A, 1B and 3A of the *Civil Procedure Act* and Order 22 Rule 20 and Order 51 Rules 1 of the *Civil Procedure Rules* 2010. The application seeks for orders that;
  - a. The Deputy Registrar do execute the transfer forms, application for Land Control Board forms and all necessary transfer documents of land parcel Kisumu/Nyalenda “B”/1433 from the name of the 1<sup>st</sup> Defendant/Respondent to the Plaintiff/Applicant.
  - b. The Defendant/Respondent to pay the cost of the application.
2. The grounds upon which the application is brought are that judgement was entered in favour of the Plaintiff to the effect that the Respondents do transfer ownership of land parcel No. Kisumu/Nyalenda “B”/1443 from the 1<sup>st</sup> Respondent to the Plaintiff/Applicant. That the decree was extracted and served upon the 1<sup>st</sup> Respondent who has refused to comply. That the Plaintiff/Applicant has no other way to enforce the judgement of the court than to request that the Deputy Registrar do execute the transfer instruments.
3. The application was supported by the averments in the Supporting Affidavit of Alphonce C. Lumumba Omido, the Applicant, sworn on 15<sup>th</sup> March, 2023 and the annexures thereto.



4. The application was opposed vide the grounds of opposition dated 24<sup>th</sup> August 2023. The Respondents' case is that the application is incompetent, frivolous and vexatious and ought to be dismissed with costs. That the application has failed to meet the criteria for grant of the orders sought since it seeks to challenge the discretionary powers of the court exercised judiciously. That the application is a clear abuse of the court process and a tactic which is intended to create a legal morass, frustrate the Defendant.
5. I have considered the application, the grounds of opposition and the oral submissions made by Counsel for the parties on 18<sup>th</sup> March, 2024. One of the annexures to the Supporting Affidavit is the judgement in this matter delivered on 6<sup>th</sup> April, 2021. A reading of the judgement reveals that one of the reliefs granted was that title of land parcel Kisumu/Nyalenda "B"/ 1443 in the 1<sup>st</sup> Defendant's name was cancelled and the Land Registrar Kisumu County ordered to rectify the register and substitute the 1<sup>st</sup> Defendant's name with the Plaintiff's name. Also annexed to the Supporting Affidavit is a copy of decree in this case. The same confirms the contents of the judgement.
6. The 1<sup>st</sup> Respondent does not dispute the existence of the judgement and decree or the allegations that she has refused to sign the transfer instruments so as to enforce or implement the judgement.
7. I find that it is in the interest of justice that the application be allowed so as to enable execution of the judgement. The application has merit and is hereby allowed as follows: -
  - a. The Deputy Registrar of this court do execute the transfer forms, application for Land Control Board consent forms and all necessary documents so as to effect transfer of land parcel No. Kisumu/Nyalenda "B"/1433 from the 1<sup>st</sup> Defendant/Respondent to the Plaintiff/Applicant.
  - b. Costs of the application to the applicant.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 30<sup>TH</sup> DAY OF MAY 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen- Court Assistant.

Omondi for the Plaintiff/Applicant.

Raburu for the Defendants/Respondents.

