



REPUBLIC OF KENYA



**Ndegwa v Mpaai (Environment & Land Case 88 of 2011)  
[2024] KEELC 6477 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6477 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 88 OF 2011  
AA OMOLLO, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**TITUS GETHI NDEGWA ..... PLAINTIFF**

**AND**

**MOINKE ENE ERNEST MPAEI ..... DEFENDANT**

**RULING**

1. For determination is the Motion dated 28<sup>th</sup> November, 2023 which seeks the following orders;
  1. Spent
  2. That this Honourable Court be pleased to issue an Order for the Applicant Titus Gethi Ndegwa to deposit with this Court the balance of the purchase price as assessed by this Court in its judgment delivered on 26<sup>th</sup> October, 2023, for subsequent collection by the Respondent.
  3. That following such deposit in Court, the Deputy Registrar of the Environment and Land Court at Nairobi do proceed to sign the transfer documents in favour of the Applicant, Titus Gethi Ndegwa in respect of title No Kajiado/Kitengela/33257.
  4. Upon payment of the Applicant of the statutory stamp duty and other registration charges, the Land Registrar Kajiado, do proceed to register the said Transfer signed by the Deputy Registrar of this Court and proceed to issue a new title document in the name of the applicant herein Titus Gethi Ndegwa in respect of Title No Kajiado/Kitengela/33257 while dispensing with the production of the original title.
  5. Costs of this application be awarded to the applicant.
2. It is premised on the grounds listed on its face inter alia;



- a. Pursuant to the court’s judgment and with the aim of complying with the Orders of the Court, the Applicant through his Advocates wrote to the Respondent’s Advocates on 6<sup>th</sup> November, 2023 confirming availability of the assessed balance of the purchase and requesting for the release of the original transfer and title documents as well as the Respondent’s bank details.
  - b. In spite of the requests having been made by the Applicant’s Advocates to the Respondents on 6<sup>th</sup> November, 2023 and 9<sup>th</sup> November, 2023 the respondent has nonetheless failed, refused and/or ignored to supply to the Applicant the original transfer and title document in respect of Title Number Kajiado/Kitengela/33257 as well as the Respondent’s bank details as Ordered by this Honourable Court.
  - c. It is unbelievable, reprehensible and unacceptable that letters requesting for the above stated documents and details were totally ignored in disobedience of the Court Orders of this Honourable Court of 26<sup>th</sup> October, 2023 and the Applicant continues to be heavily prejudiced by the Respondent’s unlawful conduct as he continues to await his title to enable him deal with the property in the manner that he deems fit.
  - d. Further, the Respondent has with a view to defeat the execution of the judgment of this Court of 26<sup>th</sup> October, 2023 refused and or neglected to sign the relevant transfer documents which refusal/neglect is calculated to defeat this court’s judgment.
3. The plaintiff/Applicant filed two affidavits in support of the motion. The supporting affidavit reiterated the facts set out in the grounds listed on the face of the application. In the further affidavit, the Applicant deposes that his counsel was in the process of extracting a decree and which they did extract on 7<sup>th</sup> June, 2024.
  4. Further, he deposes that the preliminary objection dated 25<sup>th</sup> January, 2024 is misplaced and must be dismissed. He avers that the Respondent, despite knowing what is required of her has failed, neglected and refused to honour the said orders.
  5. The Defendant filed a Preliminary Objection dated 25<sup>th</sup> January, 2024 which pleaded thus;
    1. The application is brought under Section 98 of the *Civil Procedure Act* Seeking the execution of an instrument by order of the Court, Section 98 of the *Civil Procedure Act* is express that;
 

“Where any person neglect or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, 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 or endorse it.
    2. The Application is premature, misconceived, frivolous, vexatious and an abuse of the Court process and should be struck out in limine as the same is filed before a decree or order has been extracted and/or served upon the Respondent, directing the Respondent to execute any conveyance, contrary to the statutory provisions of section 98 of the *Civil Procedure Act*.
  6. The plaintiff filed written submissions dated 18<sup>th</sup> June, 2024 and submitted inter alia that the Preliminary Objection raised does not meet the threshold of a Preliminary Objection as set out in the case of *Mukisa Biscuits Manufacturing Company Limited v West End Distributors Ltd* (1969) E.A



696. On non-compliance of Order 22 rule 6 of the Civil Procedure Rules, he submits the defendant has not demonstrated how/why he argues the current application is not compliant.
7. The Plaintiff/Applicant argues the application is merited. That the Defendant has not controverted the facts presented in support of the application. He also cited section 98 of the Civil Procedure Act which states thus;-
- “Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, 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.”
8. That it is necessary for an order to be made for the Deputy Registrar to sign the transfer document because of reluctance on the part of the Defendant/Respondent. To support this argument, he cited John F. Mbugua Njoroge v George Gachiriri & others (2012) eKLR where it was held thus;..
- “This Court is also now also enjoined to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes under section 1A and 1B of the Civil Procedure Act, and possesses the inherent power to grant the order under section 3A of the said Act in the interests of justice. Furthermore, the Registered Land Act which is the regime under which Plot No Gatamaiyu/Kamburu/T.182 is registered, does provide in section 33 that a Registrar can dispense with the production of a title deed on the registration of any dealing relating to the land in question.”
9. As at the time of writing this ruling, the Respondent had not filed any written submissions. In essence, she has not made arguments in support of the Preliminary Objection which she relied upon in opposing the application.

#### **Determination:**

10. The Applicant has set out the reasons that caused him to move the court. This case was filed in court in the year 2011. Parties attempted to reach some form of settlement in the year 2012 but which consent did not fully settle the matter. Consequently, the court rendered itself vide a judgment delivered on 26<sup>th</sup> October, 2023. The court directed the Applicant to pay monies due to the Respondent within 7 days of the judgment.
11. That order of payment did not require extraction of the decree for the Applicant to comply. It also made a provision that the Defendant would forward the duly signed transfer instrument and original title in respect of Kajiado/Kitengela/33257. The Applicant has deposed that they wrote to the Defendant’s counsel on 6<sup>th</sup> November, 2023 to express their readiness to pay but they received no response.
12. One of the prayers sought is an order allowing the Applicant to deposit the decretal sum in court. This application was brought on 28<sup>th</sup> November, 2023 which is more than 7 days from when the plaintiff was required to have paid the balance as decreed. Such a request cannot be said to be premature where the Respondent does not deny they did not reply to the letter of 6<sup>th</sup> November, 2023 to give details on



how they were to be paid/receive the money. Otherwise the plaintiff may stand accused of defaulting in complying with the terms of judgment.

13. I have perused the court record of 26<sup>th</sup> October, 2023 and noted that the judgment was delivered in the presence of counsel for the defendant thus the Defendant is presumed to be aware of what the judgment dictated to the parties. Section 98 of the [Civil Procedure Act](#) which the Respondent relies on refers to compliance with a decree or order directing the execution of any conveyance, contract or any document. The judgment as read directed the Defendant to execute the transfer documents.
14. The non-extraction of the decree before filing of this application in my view is a technical hitch which can be cured by the provisions of article 159(2)(d) of the [Constitution](#). The Respondent has not explained any prejudice she has suffered as a result of the omission and which omission was subsequently cured by the extraction of a decree on 7<sup>th</sup> June, 2024 and service effected. Yet still at the time of prosecution of this application, there is no indication that she has provided the documents required and the account of where the money is to be paid.
15. Therefore, I am persuaded to find that the application is merited and allow it with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**A. OMOLLO**

**JUDGE**

