



REPUBLIC OF KENYA



**Muchiri v Muchiri & another (Miscellaneous Application 10 of 2023)
[2024] KEELC 5962 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 5962 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
MISCELLANEOUS APPLICATION 10 OF 2023
JO OLOLA, J
SEPTEMBER 20, 2024**

BETWEEN

JOHN NDERITU MUCHIRI APPLICANT

AND

ISAAC WANG'OMBE MUCHIRI 1ST RESPONDENT

LAND REGISTRAR NYERI 2ND RESPONDENT

RULING

1. By the Notice of Motion dated 20th April 2023, John Nderitu Muchiri (the Applicant) prays for orders as follows:-
 1. That this Honourable court be pleased to authorize the Deputy Registrar to sign all the necessary documents on behalf of the Respondent in order to give effect to the decree issued herein on 12th day of April 2023;
 2. That the Nyeri Land Registrar be directed to dispense with the production of the original Title Deed in respect of Tetu/Kiriti/44 and, the Respondent's passport size photograph, Pin Certificate and his identity card while registering the transfer;
 3. That the Officer Commanding Station Nyeri Police Station to provide security during the subdivision of the said parcel of land Tetu/Kiriti/44; and
 4. That the costs of this application be provided for.
2. The application which is supported by an affidavit sworn by the Applicant is based on the grounds:-
 - a) That the decree herein was issued on 12th April 2023;
 - b) That the Respondent has declined and/or refused to sign the relevant documents to give effect to the said decree;



- c) That it is only mete and just that the orders sought are granted so as to effect the decree.
3. Isaac Wangombe Muchiri (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 5th May 2023, the Respondent asserts that the application is misconceived and an abuse of the court process. It is the Respondent's case that there is a Notice of Appeal filed herein on 29th March 2023 which Notice was served upon the Applicant on 13th April 2023.
 4. The Respondent avers that no request for signing of documents has been made to him either directly or through his Advocate and asserts that the application is malicious and without merit. The Respondent further avers that even if counsel for the Applicant may have extracted the decree, the same was never served on his Advocate for approval or even formally for information and he accuses the Applicant of acting behind his back to derail the intended Appeal.
 5. I have carefully perused and considered the Motion as well as the response thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties.
 6. By this application before the court, the Applicant urges the court to authorize the Deputy Registrar of the court to execute all necessary documents on behalf of the Respondent in order to give effect to the decree issued herein on 12th April 2023. He further urges the court to direct the Land Registrar to dispense with certain requirements for transfer that would have been applicable where the Respondent were co-operating in the process and for the OCS Nyeri Police Station to provide security during the sub-division of the suit property.
 7. The application before the court is based on the grounds that the decree sought to be executed was issued herein on 12th April 2023 and that the Respondent has declined and/or refused to execute the relevant documents to give effect to the said decree.
 8. On his part, the Respondent has termed the application as malicious and an abuse of the court process. It is the Respondent's case that he has neither been served with any documents for execution nor has he refused to execute any. The Respondent avers that he was not aware of the decree sought to be executed as none has been served upon him either for approval or even for his information.
 9. For a start, I must state that while the Applicant urges the court to give effect to a decree issued herein on 12th April 2023, no decree was issued in this file as this is a Miscellaneous Application instituted in this court on 20th April 2023, some eight (8) days after the decree was issued.
 10. As it were, the process of preparation and extraction of a decree is a matter regulated by the law and the procedures available for that purpose. In that respect, Order 21 Rule 8 of the Civil Procedure Rules provides elaborately as follows:-

“(2) Any party in a suit at the High Court may prepare a draft decree and submit it for approval of the other parties to the suit, who shall approve it with or without amendment, or reject it without undue delay; and if the draft is approved by the parties, it shall be submitted to the registrar who, if satisfied that it is drawn up in accordance with the Judgment, shall sign and seal the decree accordingly;

(3) If no approval of or disagreement with the draft decree is received within seven days after delivery thereof to the other parties, the registrar, on receipt of notice in writing to that effect, if satisfied that the decree is drawn up in accordance with the Judgment, shall sign and seal the decree accordingly;



(4) On any disagreement with the draft decree any party may file the decree marked as “for settlement” and the registrar shall thereupon list the same in chambers before the Judge who heard the case or, if he is not available, before any other Judge, and shall give notice thereof to the other parties.”

11. My understanding of the above provisions is that the process of extraction of a decree is regulated by the rules. That process required that where a party decides to extract the decree, due notice must be given to the opposite party who is then granted seven (7) days within which to approve or reject the same. Even where no such approval or disagreement is received, the party generating the draft must again notify the registrar in writing and the registrar is then under a duty to consider if the draft is drawn in accordance with the Judgment.
12. In the matter before me, the Applicant states clearly that the draft was generated by his Advocate. There is no denial that there was no service of the same or any other document upon the Respondent as asserted by the Respondent himself in the Replying Affidavit. As I do not have the original file where the decree was issued, it was not clear to me how or when the Registrar was moved to execute the decree.
13. What was apparent was that the process was rushed and that the Respondent was not involved at all in the final process. From the material placed before this court, Judgment was delivered on 28th March 2023. On 12th April 2023, a decree was issued in the hands of the Deputy Registrar authorizing execution. Without any evidence when the decree was served upon the Respondent, the Applicant moved this court some 7 days later on 20th April 2023 seeking the orders enumerated hereinabove.
14. Without any evidence that the requirements under Order 21 Rule 8 of the Civil Procedure Rules were complied with and/or that the Respondent had been served with the decree and/or any documents to execute and that he had refused to do so, it was evident to me that the Motion dated 20th April 2023 was premature, misconceived and without any lawful basis.
15. In the premises, the Motion dated 20th April 2023 is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 20TH DAY OF SEPTEMBER, 2024.

In the presence of:

Mr. Kioni for the Applicant.

No appearance for the Respondents.

Court Assistant: Michael

.....

J. O. OLOLA

JUDGE

