



**Nabiswa v Walela alias Maurice Otema Walela (Environment & Land Case E003 of 2023) [2024] KEELC 13326 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13326 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE E003 OF 2023  
EC CHERONO, J  
NOVEMBER 21, 2024**

**BETWEEN**

**SAMWEL WALELA NABISWA ..... APPLICANT**

**AND**

**OTEMA WALELA ALIAS MAURICE OTEMA WALELA ..... RESPONDENT**

**RULING**

1. The plaintiff Applicant has moved this Honourable Court vide a Notice of Motion under certificate of urgency dated 8<sup>th</sup> July, 2024 seeking the following orders;
  1. (spent)
  2. That this Honourable court be pleased to direct the Deputy Registrar to sign all the relevant documents on behalf of the defendant/Respondent herein that will facilitate the transfer of Title Number Ndivisi/Muchi/207 to the plaintiff/Applicant's name
  3. That the Respondent be ordered to pay costs of this application in any event.
2. The application is based on five grounds apparent on the face of the said application and a supporting affidavit of the Plaintiff/Applicant sworn on even date. The supporting affidavit contain three annexures being a copy of a decree, a copy of a letter by the Applicant's advocate to the defendant/Respondent dated 6/6/2024 all marked 'SWN-1, SWN2 & SWN3.
3. The said application is not opposed despite an affidavit by service one George Mumali, licensed process server sworn on even date. According to the Applicant, a judgment was entered by this Honourable court in his favour against the Defendant/Respondent in respect of the suit land on 11/04/2024. After the impugned judgment was delivered, his advocates on record wrote a letter to the Defendant forwarding the transfer documents for signing and return. He stated that he even went to the area Chief who summoned the Defendant/Respondent to sign the said transfer documents but the Defendant/



Respondent refused. He therefore asked this court to order the Deputy Registrar to sign all statutory documents to facilitate the transfer of the suit property in his name as ordered by this Honourable court.

4. I have considered the Notice of Motion application, the supporting affidavit, the annexures thereto and the applicable law. It is not disputed that this court delivered judgment in favour of the plaintiff/Applicant herein on 11/4/2024 where it was declared that the defendant/Respondent's registration of the land comprised in Title Number Ndivisi/Muchi/207 is in the capacity as a trustee for the plaintiff and which trust should now terminate and the defendant ordered to transfer the said land to the plaintiff/Applicant and in default, the Deputy Registrar of the court to execute all such documents as would facilitate the transfer of the said land to the plaintiff/Applicant.
5. The Applicant has deposed on oath that his advocate on record sent transfer documents to the Defendant/Respondent to sign and return to enable him effect the transfer of the suit land in his name as ordered by the court but he declined. I am satisfied that the defendant/Respondent was indeed sent the transfer documents for his execution but he failed and/or refused to do. Since court orders are not given in vain, I find that it would serve the ends of justice and no prejudice will be suffered by the Defendant/Respondent if the said application is allowed.
6. The upshot of my finding is that the Notice of Motion application dated 8<sup>th</sup> July, 2024 is merited and the same is allowed as follows;
  1. The Deputy Registrar of this Honourable court to sign the transfer forms and all statutory documents on behalf of the Defendant/Respondent herein to facilitate the transfer of Land Title Number Ndivisi/Muchi/207 in the name of the plaintiff/Applicant.
  2. The land Registrar, Bungoma county is hereby directed to dispense with the production of the original Title deed, copies of passport size photographs and the production of any other statutory documents by the Defendant/Respondent to facilitate the transfer of land parcel NO. Ndivisi/Muchi/207 in the name of the plaintiff/Applicant.
  3. The Costs of this application to be borne by the Defendant/Respondent.

**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2024.**

**HON. E.C CHERONO**

**ELC JUDGE**

In the presence of;

Applicant/Advocate-absent.

Respondent/Advocate-absent.

Bett C/A.

