



**Raghwani & 2 others v Kerai (Legal representative of the Estate of Kanji Mavji Kerai) (Environmental and Land Originating Summons E042 of 2021) [2024] KEELC 13409 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13409 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E042 OF 2021  
LN MBUGUA, J  
NOVEMBER 14, 2024**

**BETWEEN**

**DHANJI LAXMANBHAI BHIMJI RAGHWANI ..... 1<sup>ST</sup> APPLICANT**

**MANJI KANJI RAGHWANI ..... 2<sup>ND</sup> APPLICANT**

**VIRJI KANJI RAGHWANI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**DEVJI KANJI MAVJI KERAI (LEGAL REPRESENTATIVE OF THE ESTATE OF KANJI MAVJI KERAI) ..... RESPONDENT**

**RULING**

1. Before me is the Plaintiff's Notice of Motion dated 19.2.2024 seeking orders that:
  - i. That the value of 25% share of L.R. no 209/4593/2 being a sum of Kshs.40,000,000 be held and deposited by the applicant in a joint bank account in the name of both Ayiko Kangethe & Co Advs and Maina Makome & Co Advs pending completion and successful transfer of the share to the applicant herein.
  - ii. That the Deputy Registrar of this court to execute the instruments of transfer of the 25% share of L.R no 209/4593 held by the respondent into the name of the applicants herein in compliance with clause c of the decree.
  - iii. That the cost of this application be provided for."
2. The application is premised on the grounds on the face of the application and the supporting affidavit of Charles Mwangi Kangethe, advocate for the applicants. The applicants contend as follows;



- a. That Vide a Decree issued on the 17<sup>th</sup> April, 2023, the court directed that a valuation of the property L.R no 209/4593/2 be conducted and a valuation report dated 5<sup>th</sup> June 2023 was prepared placing the value of the subject property at kshs.160,000,000.
  - b. That from the valuation report the respondent's share of 25% of the property is assessed at Kshs.40,000,000 which is supposed to be compensated by the applicant in exchange of transfer as ordered by court in the Decree issued on the 17<sup>th</sup> April 2023.
  - c. That however despite the applicant's compliance with the court orders and showing willingness to pay the respondent his 25% share of Kshs.40,000,000 the respondent has declined to cooperate and continues to frustrate the process necessitating this instant application.
  - d. That the applicants are desirable to have the matter resolved as soon as possible to have the transfer of the respondents share executed by the deputy registrar as ordered by court.
  - e. That the applicant continues to suffer prejudice by the continued delay in concluding the matter.
3. On 16.7.2024 in the presence of the counsel for the respondent, this court gave directions for the respondent to file and serve their response by 7.8.2024, the applicant was to file and serve submissions by 14.8.2024 and the respondent was to file/serve submissions by 28.8.2024. There was no compliance on the part of the respondent hence the application is unopposed.
  4. In the Supreme Court of Kenya case of *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 Others* [2018] eKLR, the court stated that;

“As a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the court will as a matter of course grant the sought orders. It behooves the court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.
  5. Thus this court has a duty to look into the merits of the current application, even if the same is unopposed. A perusal of the application reveals that the applicants simply desire the decree to be executed. Clause 1 & 11 in the judgment delivered on 9.2.2023 indicates that the property in question was to be valued and 25% thereof was to be sold, with the applicants getting the 1<sup>st</sup> priority. Clause 111 thereof gave the Deputy Registrar the mandate to execute any requisite documents to facilitate the transfer of the aforementioned property in the event of none co-operation. The respondent has not proffered any evidence detailing the nature and extent of his compliance with the court's judgment.
  6. I therefore find that the application dated 19.2.2024 is geared towards effectuating the aforementioned judgment. As such the said application is hereby allowed with costs to the Applicants.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>th</sup> DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:**

Kang'ethe for Plaintiff

Maina Makau for Defendant



Court Assistant: Vena

