



**Gitau & another v Muthiora (Environment & Land Case
1245 of 2014) [2025] KEELC 3000 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3000 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1245 OF 2014**

**AA OMOLLO, J
MARCH 27, 2025**

BETWEEN

SAMUEL CHEGE GITAU 1ST PLAINTIFF

JACINTA WANJIKU NGUGI 2ND PLAINTIFF

AND

JOSEPH GICHERU MUTHIORA DEFENDANT

RULING

1. The Applicant filed notice of motion dated 23rd October 2024 supported by an affidavit sworn by Samuel Chege Gitau on the same date seeking for the following orders;
 1. This honourable Court be pleased review its orders issued on 20th April 2023.
 2. This Honourable Court be pleased to issue an order for the arrest and committal to prison of the Defendant/ Respondent herein for willful disobedience of the Court and deliberately misleading the Court in order to subvert the course of justice.
 3. This Honourable Court be pleased to punish the Defendant/ Respondent herein by imposing a fine to determined by the Court upon him for willful disobedience of the Court and deliberately misleading the Court in order to subvert the course of justice.
 4. This Honourable Court be pleased to order and direct the Defendant/ Respondent to comply with the judgment and decree herein of 10th June 2021 within 90 days of this ruling, or such other period as the Court may deem expedient, and particularly direct that the Defendant do;
 - a. Carry out and register a fresh subdivision of the Suit property, that is to say, Dagoretti/ Riruta 3102.



- b. transfer a portion Of the Said "Title No, Dagoretti Riruta/ 3102 with frontage along Kahuho with a width of 33.3 Metres and a length of 29.5 Metres.
 5. Any other order this Honourable Court may deem just and fair in the Circumstances, flowing from the judgment aforesaid.
 6. Costs of this Application
2. The motion is premised on the grounds that the judgement delivered by this court on 10th June 2021 in presence of Defendant ordered him to inter alia to ensure the registration of the mutation presented for registration on 6th September 2011 and transfer to the 2nd Plaintiff, title No. Dagoretti/ Riruta/6188 being a portion of title No. Dagoretti/Riruta/ 3102 within 90 days. The Plaintiff was also ordered to transfer to him Kshs. 200,000. That the Plaintiffs have met their requirements by paying the Defendant Kshs.200,000 vide Cheque No.26516 dated 18th June 2022 but the Defendant has completely refused to comply therewith.
 3. That this court dismissed on 20th April 2023 an application seeking for the Defendant to be cited and punished for contempt as on fact before it, the Defendant had employed all diligence to pursue the registration and transfer but was held back by the processes at the land's office.
 4. The Applicants states that they have obtained new and compelling evidence that the purported registration of the mutation dated 21st June 2021 and which was relied on by the Defendant to convince the Court of his compliance with the decree is at best irregular and at worst a fraud. This is so because on 9th September 2024, their Advocates wrote to the Registrar Nairobi Lands Office expressing concerns about the propriety of the purported registration of the mutation. On 15th October 2024 they received a response from the Chief Lands Registrar confirming indeed that his register does not reflect the said entry.
 5. The Applicant avers that the Defendant is not unable to register the mutation but is unwilling to abide by the terms of the judgement. That they are apprehensive that if the Defendant continues to engage in this dishonest behaviour so as hoodwink this Court, he is denying them the fruits of their judgement. They added that the application has been made within 8 days, after the discovery of the new evidence.

Analysis and determination:

6. This application is unopposed but it is the duty of the Court to still subject it to a merit assessment in accordance with the applicable laws and principles as held in *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR where the Supreme Court of Kenya held 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. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter. We see no such jurisdictional issue in the application before us. Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court...”
7. I have read the chronological of events that transpired; Judgement was delivered on 20th April 2021 which inter alia directed the Defendant to register mutation presented for registration on 6th September



2011 and transfer to the 2nd Plaintiff, Title No. Dagoretti/ Riruta/6188 being a portion of Title No. Dagoretti/Riruta/ 3102 within 90 days and the Plaintiff transfer Ksh.200,000 to the Defendant.

8. The Plaintiff transferred the said amount on 22nd June 2021 while the Defendant through letter dated 20th September 2021 requested for more to complete the registration. The Chief Land Registrar through a letter dated 15th October 2024 confirmed that their registry do not reflect having received any documents and asked that the alleged original booking form and payment receipts to be availed to enable them verify their genuineness.
9. The Defendant alleged attempt to register the mutations in subject in adherence to the court orders commenced in the year 2021 but he has not shown any progress despite numerous demands by the Plaintiff. The application for review was served on the Defendant but he chose not to reply thus he has not contradicted the information provided in the Chief Land Registrar's letter of 15.10.2024 that no evidence of mutations in respect of the suit property that was presented for registration.
10. It is therefore my opinion and I so hold that the Plaintiffs have presented new evidence that warrants revision of the earlier orders exempting the Defendant from blame in honouring the dictates of the decree. The motion is merited and it is granted as follows:
 1. This honourable Court does review its orders issued on 20th April 2023 dismissing the application and instead makes the following orders;
 - a. The Defendant/ Respondent if convicted of willful disobedience of the Court decree and deliberately misleading the Court in order to subvert the course of justice.
 - b. The Defendant/ Respondent is ordered to comply with the judgment and decree of 10th June 2021 within 60 days of service of the order upon him.
 - c. The Defendant shall show cause on a date to be set by this court on why he should not be punished for the disobedience of the court order.
 - d. Costs of this application to the Plaintiffs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF MARCH, 2025.

A. OMOLLO

JUDGE

