



**Keya & 2 others v Kurende (Environment & Land Case
276 of 2017) [2023] KEELC 32 (KLR) (17 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 32 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 276 OF 2017
MN GICHERU, J
JANUARY 17, 2023
(FORMERLY MACHAKOS ELC CASE NO 145 OF 2012)**

BETWEEN

**JAMES OBARA KEYA 1ST PLAINTIFF
LAWRENCE OMAGA OTWERE 2ND PLAINTIFF
CHARLES MOGAKA OTWERE (SUING FOR AND ON BEHALF OF THE
MEMBERS OF MAGECHE PROGRESSIVE SOCIETY) 3RD PLAINTIFF**

AND

STEPHEN RAKITA KURENDE DEFENDANT

RULING

1. This ruling is on the amended notice of motion dated January 26, 2022. The motion which is under sections 1A, 1B and 3A of the *Civil Procedure Act*, order 51, rule 1 *Civil Procedure Rules*, section 80(1) of the *Land Registration Act* 2012, section 5 (b) of the *contempt of Court Act*, 2016 and all other enabling provision of the law seeks the following six orders.
 - i. The court dispenses with the land control board consent as pertains to the transfer of Kajiado/ Onyore/11557 and 11559 (suit parcels).
 - ii. Transfer of the suit parcels to the plaintiffs forthwith.
 - iii. Cancellation of all entries in the register of the defendant's title in respect of the suit parcels effected after the date of judgment, that is to say, September 24, 2019.
 - iv. A declaration that the transfers of the suit parcels to any third parties after the date of judgment as irregular, null and void.



- v. An order committing the district land registrar Ngong, Ms Grace Mumo and the defendant to civil jail for six months for deliberately disobeying and contravening the judgment dated September 24, 2019.
 - vi. Any other relief that the court deems fit to grant for the enforcement of the judgment and decree.
2. The application is supported by eleven grounds, an affidavit sworn by the first plaintiff dated January 26, 2022 and twelve annexures. The gist of the above material is that even though the court ordered that the suit land be transferred to the plaintiffs, the land registrar and the defendant have failed to effect the court judgment and decree and only the orders sought herein will give effect to the said judgment and decree.
 3. The application though served on the defendant is unopposed by the said defendant. I note that it is not served on the intended land registrar Grace Mumo.
 4. I have carefully considered the application in its entirety and I find that it has merit in some of the aspects for the following reasons.
 1. Firstly, the judgment of the court dated September 24, 2019 must be enforced in all its aspects.
 2. Secondly, the defendant though served has not responded to the application as to any difficulties he may be facing in effecting the judgment of the court.
 3. Thirdly, as regards prayer 5, there is no evidence of personal service on Grace Mumo, land registrar and secondly, it is premature to order committal of the officer to civil jail unless there is clear evidence of disobedience of the court order.
 4. For the above stated reasons, I allow the notice of motion dated January 26, 2022 in terms of prayers 1, 2, 3 and 4.
 5. It so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF JANUARY, 2023.

M.N. GICHERU

JUDGE

