



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 640 OF 2017**

**HON. DAVID OLE SANKORI.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**MELIARE MPATA.....DEFENDANT/RESPONDENT**

**RULING**

1. This ruling is on the Notice of Motion dated 15/9/2021. The said motion which is by the Plaintiff/Applicant is brought under *Sections 1A, 1B, 3A and 80* of the *Civil Procedure Act, Order 45, Rule 1 Civil Procedure Rules* and all enabling provisions of law. It seeks one main prayer namely;

a. That the Court be pleased to review the Judgment delivered on 23/1/2018 and substitute the same with an order that the Defendant do transfer the suit land to the Plaintiff.

Other minor prayers are for any other order the Court deems fit and provision for costs.

2. The grounds for seeking the above orders are that the defendant has deliberately refused to comply with the order despite several requests being made to him, the decree might end up being a paper one, the Plaintiffs rights to the suit are not protected as the land is registered in the name of the Defendant who could transfer it to third parties and Court Orders are not made in vain and ought to be complied with.

3. The application is supported by an affidavit sworn by the Applicant in which he reiterates the above grounds. Annexed to the affidavit is the Judgment dated 23/1/2018 and three (3) letters dated 19/2/2019, 28/3/2019 and 18/6/2020 addressed to the Defendant's Counsel and written by the Plaintiff's Counsel requesting for the settlement of the decree.

4. The application by the Applicant is opposed by the Respondent who has sworn a replying affidavit dated 24/1/2022 in which he denies deliberately refusing to satisfy the decree.

He says that he tried to sell a portion of the suit land but he has not succeeded. The intention was to raise money and pay the Plaintiff.

Counsel for the Defendant filed written submissions on 17/2/2022. No submissions were filed by the Plaintiff's Counsel.

5. I have carefully considered application in its entirety including the affidavits, the record, the grounds and the provisions under which it is brought.

I find that the application has no merit and is dismissed for the following reasons.

Firstly, the applicant has not proved that the Respondent has deliberately refused to settle the decree. To do so, he would have to demonstrate that the Respondent can afford Ksh. 8.3 Million and is refusing to pay up. He has not done so.

Secondly, the Applicant has many modes of execution of the decree. He can seek to attach the Defendant's known property including the suit land.

Thirdly, there is nothing to show that the suit land is valued at Ksh. 8.3 million. If the Application was allowed, it is not clear to Court if the order would be just. I do not think that the 100 acres which comprise the suit land are worth so little.

Finally, the threshold in *Order 45, Rule 1* of the *Civil Procedure Rules* of discovery of a new and important matter, or evidence which was not within the knowledge of the Plaintiff, or error apparent on the face of the record or any sufficient reason has not been met.

Having no merit, the application dated 15/9/2021 is dismissed. Costs in the cause.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO 20<sup>TH</sup> DAY OF APRIL, 2022**

**M.N. GICHERU**

**JUDGE**



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