



Case Number:	Environment and Land Appeal 3 of 2019
Date Delivered:	19 May 2021
Case Class:	Civil
Court:	Environment and Land Court at Meru
Case Action:	Ruling
Judge:	Lucy Waruguru Gitari
Citation:	Rael Karoki Kiriinya & another v Grace Gapunge & 3 others [2021] eKLR
Advocates:	Mwirigi for the 2nd Respondent Mwanzia for 3rd & 4th Respondents Munene for the Appellants M/s Murithi for 1st Respondent
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Meru
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal allowed.
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 3 OF 2019

RAEL KAROKI KIRIINYA.....1ST APPELLANT

VERONICA NGUGI KIRIINYA.....2ND APPELLANT

VERSUS

GRACE GAPUNGE.....1ST RESPONDENT/APPLICANT

IRENE NTUI KITHINJI.....2ND RESPONDENT

CHARITY GACHERI IKUNYUA.....3RD RESPONDENT

JOHNSON OGINGA OJWANG.....4TH RESPONDENT

RULING

1. The 1st respondent, **Grace Gapunge** has filed an application dated 12/10/2020 seeking an order directing the District Land Surveyor Meru Central District to visit the land parcel number L.R ABOTHUGUCHI/KARIENE/3689 and curve out ½ acre and the District Land Registrar to register the ½ acre in the names of the applicant, Grace Gapunge effectively executing the decree of this court dated 21st July 2020. The applicant also desires that the costs of the application be borne by the 2nd appellant.

2. The applicant avers that she is the decree holder, where this court had decreed that the 2nd appellant do transfer ½ acre from L.R ABOTHUGUCHI/KARIENE/3689, but the said 2nd appellant has refused to transfer the same. There is a need for the district land surveyor to sub divide the land which is bigger than ½ an acre.

3. The 2nd appellant has opposed the application vide a replying affidavit dated 28/10/2020 averring that in fulfillment of the court order, she sought land control board consent for sub division of the subject parcel in vain as she was informed that inhibition orders and caution orders had been lodged by the applicant herein and it was not true that she has refused to transfer the land to the applicant. To this end, the 2nd appellant avers that there is an official search indicating that the land is inhibited and the applicant has not made a move to have the inhibition removed.

4. I have carefully considered all the arguments advanced by the parties. It is not in dispute that this court delivered a judgment in this matter on 30/4/2020 nor is it in dispute that the said judgment is in favor of the applicant. Further, by the said judgment and the decree dated 21/07/2020, there is an order to the effect that ***“any orders of injunction or inhibition as well as orders of stay of execution in respect to the suit parcels are hereby discharged.”*** That in itself is self-explanatory and self-executing. The claim by the 2nd appellant that the applicant was required to have the inhibition order lifted is baseless.

5. I do opine that a party must be allowed to enjoy the fruits of their judgment. However for avoidance of doubt, it is hereby ordered as follows;-

1) Any inhibition, injunction or caution lodged on land parcel no. ABOTHUGUCHI/KARIENE/3689, is hereby discharged.

2) An order is hereby issued directing the District Land Surveyor Meru Central District to visit the land parcel number L.R ABOTHUGUCHI/KARIENE/3689 and curve out ½ acre thereof and the District Land Registrar is to register the ½ acre in the names of the applicant, GRACE GAPUNGE effectively executing the decree of this court dated 21st July 2020.

3) Each party is to bear their own costs of the application.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19TH DAY OF MAY, 2021 IN PRESENCE OF:

C/A: Kananu

Mwirigi for 2nd respondent

Mwanzia for 3rd & 4th respondents

Munene for appellants

M/s Murithi for 1st respondent

HON. LUCY. N. MBUGUA

ELC JUDGE



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