



REPUBLIC OF KENYA



KENYA LAW
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Waweru v Kimani (Civil Suit 32 of 2010) [2023] KEHC 276 (KLR) (27 January 2023) (Ruling)

Neutral citation: [2023] KEHC 276 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL SUIT 32 OF 2010
DKN MAGARE, J
JANUARY 27, 2023**

BETWEEN

PATRICK WAINAINA WAWERU APPELLANT

AND

FLORENCE NYAMBURA KIMANI RESPONDENT

RULING

1. This matter came up before me on January 23, 2023 for hearing of the application dated September 18, 2020. This matter was placed before me due to the ongoing Rapid Results Initiative (RRI). The application sought two prayers, that is: -
 - a. The honourable court be pleased to issue an order lifting the caveat lodged by the defendant on the suit property known as Law Reference No 10901/241 – Kahawa Sukari.
 - b. Costs of the application be provided for.
2. The grounds in support are on the face of the application and are supported by one affidavit of the applicant Florence Nyambura Kimani. The application was not opposed inspite of service done personally on the advocates for the defendant/respondent.
3. I placed aside the matter to wait for the said Advocates in vain. I was satisfied with service and ordered the applicant to proceed and I reserved the ruling for today. Background to the application.
4. The trouble in paradise is well captured in the judgment of Kimaru Judge as then he was delivered on September 26, 2014. Thereafter there has been a myriad of application, this last one being the ruling



of Muchelule Judge as he then as on October 23, 2018 which was read on his behalf by Lady Justice A N Ongeru Judge. The ruling provided in paragraph 4, in so far as it is relevant, herein that,

“I direct the respondent to pay to the applicant Kshs 3,115,525/= within 60 days following which the applicant shall give vacant possession of the same to the respondent. The applicant in that ruling was Patrick Wainaina Waweru. He was to give vacant possession to Florence Nyambura Kimani. There were other applications.”

5. The applications took up a lot of the court’s time. However, from the chicken have come home to roost. The falcon must meet the Falconer, since the centre is not holding. The judgment of Justice Muchelule should be given effect. The respondent has not shown why the application should not be allowed.
6. However, I am also wary of these applications that the parties being making in investment if that were not to be the case, the payment has been fully paid. The former husband had been enjoying the suit property.
7. I am satisfied that the application is merited. I do not allow it. *Ex defacto justiceae* I make the following disposition: -

Disposition

8. The application dated September 18, 2020 be and is hereby allowed in terms that:
 - a. A caveat placed on the land already adjudged to belong to the former wife, after the payment above be and are hereby lifted.
 - b. For avoid of doubt the suit property referred to is Land Reference Number 10901/24/Kahawa Sukari.
 - c. The defendant Patrick Wainaina Waweru to yield vacant possession forthwith as per the order of Justice Muchelule given on October 23, 2018 as read by Hon Justice AN Ongeru, in default of so doing he be forcefully removed.
 - d. The said Registrar should facilitate and actually register the title in the names of Florence Nyambura Kimani if not already done so.
 - e. The matter be mentioned before the Deputy Registrar on March 8, 2023.
 - f. Whereas the matters is a family matter, these are no good reasons to deny the applicant herein her costs for the application. She deserves them.
9. I accordingly, allow her costs of Kshs 17,000/= for the application to the applicant in the application.
10. The application is allowed in this above terms.
11. It is so ordered.

DATED, ISSUED AND DELIVERED AT NAIROBI, VIRTUALLY 27TH JANUARY, THE FACT OF OUR LORD TWO THOUSAND AND TWENTY-THREE.

HON. MR. JUSTICE DENNIS KIZITO MAGARE

JUDGE OF THE HIGH COURT, NAIROBI

In the presence of;

Wanjiku for the Appellant



No appearance for the Respondent

Wangeci Court Assistant.

