



REPUBLIC OF KENYA



KENYA LAW
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**JWW v EWH (Civil Suit E054 of 2013)
[2023] KEHC 3059 (KLR) (Family) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 3059 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E054 OF 2013
EKO OGOLA, J
JANUARY 19, 2023**

BETWEEN

JWW APPLICANT

AND

EWH RESPONDENT

RULING

1. Before the court is a Notice of Motion application dated January 28, 2022 brought under a Certificate of Urgency of the same date. The Application prays for the following orders:
 - 1) Spent
 - 2) Leave to execute do issue
 - 3) The court do issue a time frame of sixty (60) days to complete the implementation of the court's decree issue by Hon. Justice R.E. Ougo on 1st day of October, 2015
 - 4) In default, the respondent herein one Mr. Eddie Waiyaki Hinga be committed to civil jail for Six (6) months for failure to cooperate and comply with this honorable court's order issued by Hon. Justice R.E. Ougoon 1st day of October, 2015
 - 5) The respondent be compelled to deposit the titles of properties named in the decree issued on December 31, 2015 to the Registrar forthwith
 - 6) The Deputy Registrar do oversee the implementation of the decree issued on December 31, 2015
 - 7) The Deputy Registrar do execute the appropriate documents towards the implementation of the decree of October 1, 2015 for and on behalf of the respondent



- 8) Any other orders that this honorable court may deem fit to grant
2. The application is premised upon section 63 of the *Civil Procedure Act*, Order 22 Rule 6 and 7 and Order 50 Rule 5 of the *Civil Procedure Rules* and all other enabling provisions of the Law. It is based on the grounds set out therein and is supported by the affidavit of Joyce Wangari Waiyaki sworn on January 28, 2022.
 3. The applicant's case is that a decree was issued on 31st September, 2015 directing that L.R. No. Dagoretti/Thogoto/XXXX be divided into 3 portions with the applicant getting the matrimonial home which is in the parcel of Land. The court also directed that the lower portion be sold and the proceeds be utilized to settle an outstanding mortgage which was at Kshs. 2,000,000/- with Old Mutual. The Decree also directed that the Respondent keeps L.R. No. Dagoretti/Thogoto/XXXX valued at Kshs. 32,000,000/-
 4. According to the applicant, the respondent was served with the decree but has blatantly and deliberately refused to obey the court orders causing delay to the implementation of the process which in turn will cause the applicant to suffer great prejudice unless this court intervenes.
 5. The applicant avers that the interest on mortgage with Old Mutual is compounding every day to the detriment of the matrimonial property. The respondent has also failed to provide the mother title that holds two portions L.R. XXXX assigned to the respondent and L.R. XXXX assigned to the Applicant. It is the applicant's contention that L.R. XXXX was allocated a new title L.R. No. XXX as per the new Gazette Lands Registry Digitization. She fears losing it to the Nairobi County Government for being unable to follow on Land Rates.
 6. In response the respondent filed a replying affidavit dated April 25, 2022 sworn by himself. The respondent's case is that the Applicant is the one who has defied the court orders; she has not paid the respondent a sum of Kshs. 200,000/= as ordered by court but continues to enjoy the vehicle to which the amount is related.
 7. The respondent avers that the applicant attempted to sub-divide the subject land into four portions instead of three portions as ordered by the court. This was done without consent and knowledge of the respondent who reveals that he could not sign the sub-division document for the said reason.
 8. According to the respondent, the applicant being in custody of the original documents has refused to facilitate the sale of Kenya Airways, Standard Chartered Bank, National Bank and Africa Alliance Trust Unit shares
 9. According to the respondent, the Deputy Registrar cannot be asked to execute documents that do not conform with the decree. He states that there is a matter pending in the ELC court with regard to parcel nos. XXXX and XXXX between the parties.
 10. The respondent avers that he had proposed that the decree be amended in terms that would resolve the matter to finality but he did not get an acknowledgement of the receipt of the same nor a counter-proposal.
 11. The applicant filed submissions dated August 15, 2022 while the respondent chose to rely on his replying affidavit.



Determination

12. I have carefully considered the Application before me. The contention herein is the execution of an amended decree issued on December 31, 2015. The orders of the decree are reproduced herein as follows: -

1. That L.R.No. Dagoretti/Thogoto/XXXX valued at 48 million which comprised homestead land 18 million, improvements 8 million, middle portion 19 million and lower portion 3 million be divided into (3) equal portions with the Applicant getting the matrimonial home plus the improvements thereon
2. That the lower portion shall be sold and the proceeds go towards settlement of the outstanding mortgage which stands at 2 million
3. That one (1) million remaining will be used to pay the valuer's charges of Kshs. 275,000 and any charges accruing from the sub-division of the said property should there be any costs to be shared equally by the parties
4. That the middle portion valued at 19 million shall be sold with the applicant getting 12.5 million and the Respondent getting 6.5 million
5. That the respondent shall retain L.R No. Dagoretti/Thogoto/XXXX valued at 32 Million to devolve solely to him.
6. That the applicant shall execute a transfer from the company to the respondent and the respondent shall meet the costs of stamp duty and processing the transfer in his name 6b. That the applicant shall retain L.R. XXXX while the respondent retain L.R. XXXX
7. That the shares held by the parties will be sold and the proceeds divided into two between the parties
8. That the court cannot make any conclusive findings regarding the mortgage insurance as no documents were attached to the Respondent's affidavit
9. That the household items be divided equally as agreed by the parties with the grudging music system being sold and proceeds to be shared equally.
10. That in the alternative the respondent can pay the Applicant her half share of the same if he is intent on keeping it
11. That Nissan X-Trail be kept by the plaintiff
12. That Nissan Hard body goes exclusively to the respondent
13. That Mercedes Benz valued at Kshs. 1 million goes to Applicant and she will issue the respondent Kshs. 200,000/- being his share of the vehicle and she will retain the vehicle
14. That the shares in KQ Standard Chartered Bank, National Bank and African Alliance Units be sold and the proceeds be shared between the parties
15. That the issue towards Allan for his education should be raised before the Children's Court



16. That each party to be at its own costs.
13. I have gone through the parties' arguments and documents presented by the parties. Looking at the wording of the amended decree, both parties had a role to play on execution of the same. Since the decree was issued in October, 2015 and amended in February, 2016, there have been very minimum efforts by the parties to execute the decree.
14. The applicant has argued that the respondent has refused to sign the document for the subdivision of L.R. No. Dagoretti/Thogoto/XXXX. The Respondent has not disputed that he did not sign the Sub-division papers but has given a reason as to why he did not sign. The reason being that the applicant presented him with a sub-division document showing that the land was being sub-divided into four unequal shares yet the court ordered that the land be subdivided into three equal shares. The respondent has produced a copy of the sub-division that was given to him to sign. The exhibit which is Marked "A" shows that the land was being sub-divided into four portions.
15. From the documents before the court, it is clear that both parties herein have not taken substantial steps in implementing the court decree. If both parties were serious about the decree implementation, a lot of progress could be evident within the six (6) years since the decree was issued.
16. The applicant is seeking that the court issues a time frame of sixty (60) days for the implementation of the court decree. That in default, the Respondent to be committed to Civil Jail for six (6) months for failure to cooperate and comply with the decree.
17. This court is empowered to punish a party who deliberately fails to comply with court orders as provided by section 5(1) of the *Judicature Act* as follows: -
- “(5)(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England and that power shall extend to upholding the authority and dignity of Subordinate Courts.”
18. The Court of Appeal in *Fred Matiangi the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others* [2018] eKLR held as follows: -
- “When courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. This court, as must all courts, will deal firmly and decisively with any party who decides to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.’
19. There is no doubt that every person against whom an Order is made by court of competent jurisdiction has a duty to obey it unless and until it is discharged as Orders are not issued in vain. Punishment for failure to comply with court Order is intended to protect the dignity of the court and for good order in the society. In this case, as per the orders of the court both parties have their roles to execute the decree of the court. The execution of the decree is for their joint benefits.
20. On the issue of leave to execute, there are no orders that have been stayed or reviewed to warrant leave to execute.



21. The court therefore makes the following orders: -

1. The parties are hereby ordered to comply with the Orders given by Hon. Justice R.E. Ougo on October 1, 2015 and amended on February 19, 2016
2. The parties shall after sixty (60) days from the date of this ruling, furnish the Deputy Registrar with a progress report of the implementation of the decree. Thereafter, the parties shall file a status report every thirty (30) days with the Deputy Registrar showing progress of the implementation, until the decree has been fully implemented

22. Costs shall be in the cause.

Orders Accordingly

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JANUARY 2023.

E.K. OGOLA

JUDGE

Ruling read and delivered online in the presence of:

M/s Muriuki for the Applicant

M/s Wadegi for the Respondent

Ms. Gisiele Court Assistant

