



REPUBLIC OF KENYA



Nyaga v Nyuya (Civil Case 3 of 2020) [2023] KEHC 19514 (KLR) (27 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL CASE 3 OF 2020
LM NJUGUNA, J
JUNE 27, 2023**

BETWEEN

MARY ANN WARUE NYAGA APPLICANT

AND

PHILIP NYAGA NYUYA RESPONDENT

RULING

1. The matter for determination before the court is an application dated 29.06.2022 wherein the applicant sought for orders that:
 - i. This Honourable Court do order that the restrictions placed by the applicant on parcels of land Nos: Kagaari/Ugweri/T.90; Kagaari/Ugweri/T.128; Kagaari/Ugweri/T.129; Kagaari/Ugweri/T.130; Kagaari/Ugweri/T.131; Kagaari/Ugweri/T.134; Kagaari/Ugweri/T.163 and Kagaari/Ugweri/T.169 be removed.
 - ii. The applicant/respondent be condemned to pay the costs of this application.
2. The application is premised on the grounds on its face and it's supported by the affidavit of Phillip Nyaga Nyuya.
3. The applicant depones that the suit herein was referred for court annexed mediation culminating into signing a Mediation Settlement Agreement dated September 27, 2021 and the same was adopted as the order of the court, on the October 4, 2021. That when he started the process of executing the court order, he discovered that the respondent still maintained cautions on the properties listed herein. That by a letter dated February 17, 2022 written by his advocate to the respondent's advocate, the applicant requested for the removal of the encumbrances she had placed on the various titles, but she has declined to do so.
4. In response to the application, the respondent filed a replying affidavit sworn on 01.03.2023 admitting that the matter herein has been finalized. That however, this court awarded Land Parcels No. Evurore/



Evurore/1999,Kagaari/Kigaa/2325,EmbuMunicipality/1112/99, Kagaari/Nthagaiya/T.134, 1/3 of Land Parcel No. Evurore/Evurore/1308 and motor vehicle registration No. KAH 689W Toyota to her. That the properties listed herein apart from Embu/Municipality/1112/999 are still under the applicant's name. It was her case that she had no problem with the restrictions being removed but before they are removed, the applicant should transfer the said properties to her. Further that, Evurore/Evurore/1308 from which she was to get 1/3 share should be subdivided immediately and she be invited to witness the survey process. Additionally, the motor vehicle which she was awarded is still under the possession of the applicant and therefore, the same should also be released and transferred to her name.

5. The court gave directions that the application be canvassed by way of written submissions and the parties opted to rely on their pleadings as filed.
6. I have considered and analyzed the pleadings and it is my view that the main issue for determination is whether this court ought to grant the orders sought herein.
7. Section 73 (I) of the Land Registration Act provides that caution may be withdrawn by the cautioner or removed by Court or by order of the registrar. This court equally possessed the requisite jurisdiction given that this is a matrimonial case and the parties are not opposed to the same.
8. The applicant's quest to enforce this court's orders has been made impossible by the said restrictions placed by the respondents. The respondent has stated that she is not opposed to the application herein on condition that her portion of the matrimonial property be transferred to her.
9. One of the judicial principles under Article 159 of the Constitution is that justice ought not to be delayed. It is against this background that this court finds that the matter herein having been completed, it is only fair that the parties should realize the fruits of the Judgment and that the same should not be impeded. If the respondent has any issue, with the applicant, then she should move the court as appropriate. She cannot seek orders by way of a replying affidavit.
10. Accordingly, it is my finding that:
 - i. The application is meritorious.
 - ii. The Land Registrar is hereby directed to remove the cautions to enable distribution of the said properties forming the matrimonial property as per the orders dated 04.10.2021.
 - iii. Each party to bear its own costs of the application.
11. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF JUNE, 2023.

L. NJUGUNA

JUDGE

.....Applicant

.....Respondent

