



**Arinaitwe v Kalsi & 2 others (Environment & Land Case
243 of 2017) [2023] KEELC 17133 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17133 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 243 OF 2017**

MD MWANGI, J

APRIL 25, 2023

BETWEEN

JULIUS ARINAITWE PLAINTIFF

AND

BALBIR SINGH KALSI 1ST DEFENDANT

SAWANT SINGH KALSI 2ND DEFENDANT

HARDEV SINGH KALSI 3RD DEFENDANT

(In respect of the Notice of Motion application dated 28th November 2022 by the 1st and 2nd Defendants and Notice of Motion Applications dated 16th December 2022 by the Plaintiff)

RULING

Background

1. Before delving into the applications before me, it is necessary to elaborate on the background of this matter albeit briefly.
2. The parties in this matter compromised the suit by way of a consent dated 6th September 2021 which was later amended on 6th December 2022. The consent by the parties provided that:
 1. That the defendants shall process a standard form sub-lease with terms and conditions as set out in the *Land Act*, 2012 Laws of Kenya and other terms acceptable by the plaintiffs provided that the later terms shall be excluded in the event of disagreement on the said terms, execute the said accepted sub-lease in respect to flat number 2 on the ground floor of the property known as LR No. 1870/1v/82 (the suit property) to facilitate transfer the interest in the said property to the plaintiff within 90 days from the date of execution of this consent.



2. That the defendants shall bear the costs of preparation and processing the sub-lease but the plaintiff shall bear the costs of the registration of the said sub-lease including conveyance fees, stamp duty and registration charges limited in value to the purchase price of Ksh 5,500,000/= set out in the sale agreement dated 24/01.2005 between the defendant and the plaintiff. The defendants shall obtain an assessment of stamp duty payable and deliver the same together all requisite completion documents to the plaintiff's advocates not later than 30 days from the date of execution and delivery of the said standard form sub-lease by the plaintiff to the defendant for purposes of registration of sub-lease in favour of the plaintiff.
 3. That the defendants shall pay throw away costs of Ksh. 200,000/= by a cheque payable to plaintiffs Advocates, Litoro & Omwebu Advocates within 45 days from the date of this Consent.
 4. That until the defendants comply with the terms in (1) above, the defendants whether by themselves, their agents, personal representatives, assignees or any one claiming under them shall not charge, lease, sell, dispose off, enter into any dealings save for what is stated in 1 above or in any way interfere with the plaintiffs peaceful, quiet enjoyment, use and uninterrupted possession of all that property in flat number 2 on the ground floor of the property known as LR. No. 1870/ IV/82 (the suit property).
 5. That in the event of default in any of the terms in (1) above by the defendants, the plaintiff / decree holder herein shall be at liberty to execute against the defendants to recover a sum of Kshs. 16,500,000 with interest thereon at commercial rates from 31st July 2018 until payment in full including but not limited to sell of the suit property herein to recover the monetary debt hereof.
 6. That upon satisfaction of the above this case between parties herein be marked settled.
3. None of the parties disputes the terms of the consent order.
 4. Apparently, the defendants were unable to effect the transfer of title for the Flat No 2 on the ground floor erected on the property LR No. 1870/IV/82 in Nairobi in favour of the Plaintiff or his nominee in accordance with the timelines set in the consent order.
 5. The Defendants aver that they are willing to abide by the terms of the consent and plead that the delay has been caused by factors beyond their control; principally the ongoing conversion of Nairobi titles from Registration of Titles Act to the Land Registration Act regime.
 6. The Defendants in their application dated 28th November 2022, therein seeks for enlargement of time by one year or such time as the court deems reasonable to enable them conclude the transfer in favour of the Plaintiff in accordance with paragraph (a) of the consent order. They further pray for an order that the Chief Land Registrar fast tracks the lease in favour of the suit property LR. No. 1870/IV/82 within a time to be specified by the court.
 7. The Plaintiff however, proposes a different approach. By his Notice of Motion application dated 16th December 2022, the Plaintiff prays that the court orders the Deputy Registrar of the court to execute the transfer/sub-lease with terms and conditions set out in the Land Act, 2012 and any other requisite documents necessary for registration of a sub-lease in respect of the property known as Flat No LR No 1870/IV/82 in Nairobi in favour of the Plaintiff or his nominee in terms of the consent dated 18th November 2021.



8. The Plaintiff further prays that the costs of registration of the sub-lease and transfer of the said Flat No 2 with the attendant stamp duty payable to be paid and or recovered from the Defendants jointly and severally.
9. As already pointed out, the consent order entered into by the parties is not in dispute; it was entered into by the parties willingly and on their own volition. As the court stated in the Ruling delivered on 13th October 2022 (on a different issue though), it is not prepared to interfere with the terms of the consent agreed on by the parties. Only the parties themselves may, by mutual consent vary the said terms. The terms include the timelines for the performance of the conditions agreed therein which are clearly spelt out in the consent.
10. Accordingly, I disallow the Defendants' application with costs to the Plaintiff.
11. This then leaves me with the Plaintiff's application to decide.
12. The Defendants in their responses and even submissions indicated their willingness to perform the obligations under the consent order. They cite reasons/factors beyond their control for their failure to perform within the agreed timelines.
13. I think, by allowing the Plaintiff's application, the court will be helping the Defendants expedite the process of transferring the suit property in favour of the Plaintiff as agreed in the consent.
14. Rule 28(5) of Order 22 of the Civil Procedure Rules allows the court to order/direct that the act required to be done may be done so far as practicable by the Decree-holder or some other persons appointed by the court.
15. The Defendants having failed to do as they were supposed to within the timelines specified in the consent judgment, this court finds it necessary and reasonable to issue the orders sought by the Plaintiffs - to appoint the Deputy Registrar of this Court to do the act that the Defendants were obligated to do under the consent, for the purposes of expediting the process of execution and bringing this matter to a close.
16. The end result is that the Notice of Motion application dated 28th November 2022 by the 1st and 2nd Defendants is dismissed with costs while the Notice of Motion application dated 16th December 2022 by the Plaintiff is allowed with costs.
17. Accordingly the court orders that:-
 - a. The Deputy Registrar of this court to execute the transfer/sub-lease with terms and conditions set out in the *Land Act*, 2012 and any other requisite documents necessary for registration of a sub-lease in respect of the property known as Flat No LR No 1870/IV/82 in Nairobi in favour of the Plaintiff or his nominee in terms of the consent dated 18th November 2021.
 - b. The costs of registration of the sub-lease and transfer of the said Flat No 2 with the attendant stamp duty payable to be paid and or recovered from the Defendants jointly and severally.
 - c. The costs of both applications are awarded to the Plaintiff.
18. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF APRIL, 2023

M.D. MWANGI



JUDGE

In the virtual presence of:

Mr. Olala holding brief for Mr. Litoro for the Plaintiff

No appearance for the Defendants

Court assistant - Yvette

M.D. MWANGI

JUDGE

