

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NO.41 OF 2004

SAMSON KURIA KANGETHE.....1ST PLAINTIFF

ALICE WANJIKU KURIA.....2ND PLAINTIFF

VERSUS

CHARLES CHEBUNGEI KOMEN.....DEFENDANT

RULING

1. There are two sets of applications herein which the court ordered that they be heard together, namely, the application dated **18th June 2020** by the plaintiffs which prays that the Deputy Registrar of this court be directed to sign transfer documents on behalf of the defendant who has refused to comply with the judgement of this court dated **27th February 2020** in respect to land parcel number **DUNDORI/MUGWATHI/BLOCK 2 /56 KOILEL**.

2. The second application dated **13th November 2020** is by the defendant in which he has prayed that there be stay of execution of the above courts judgement dated **27th February 2020** pending his appeal to the Court of Appeal.

3. The background to the two applications is clear and straight forward. The court on **27th February 2020** gave judgement in favour of the plaintiffs and ordered that the name of the defendant be expunged from the land register and be replaced with that of the plaintiffs. It appears from the 1st plaintiffs supporting affidavit that the defendant has refused to sign the transfer documents so as to effect the above court judgement.

4. The defendant on the other hand in his replying affidavit dated **22nd February 2021** has deponed that on the contrary he has not refused to sign the same but he has instead appealed against the decision and his appeal is pending. That he has applied for the proceedings and were it not for Covid pandemic he would have by now gone far in the processing of the same.

5. He argued that his appeal has an overwhelming chance of success and should the land be transferred to the plaintiffs he stands to suffer loss and damage and the appeal shall be rendered nugatory.

6. The court has perused the two applications herein as well as the submissions by the plaintiffs as there were none from the defendant as at the time of this ruling. The issue here is balancing the interest of both parties. The plaintiffs would want to enjoy the fruits of their judgement while the defendant wants a second opinion at the Court of Appeal.

7. Obviously it is necessary that the appeal should not be rendered nugatory should stay not be allowed. If for example the plaintiff's application is allowed whatever the status of the land at the end of the appeal must be such that the orders if in favour of the defendant are still capable of being enforced. The current use and occupation of the land is in favour of the plaintiffs I suppose and so the only issue here is to have the title in their names.

8. There is no evidence shown that the defendant has refused to execute the transfer instruments. There is no letter asking for such action from the plaintiff. The issue of Covid is a common denominator which affected litigants as well as the courts. The court is satisfied that with the steps taken by the defendant to prosecute the appeal. The same in my view are not inordinate. Taking into consideration the provisions of **Order 42 rule 6 of the Civil Procedure Rules** and balancing the interest of the parties it is hereby ordered that;

a) The defendant in the next 30 days from the date herein should sign all the transfer instruments so as to have land parcel number DUNDORI/MUGWATHI/BLOCK 2/56 KOILEL transferred to the plaintiffs as ordered by the judgement of this court dated 27th February 2020.

b) In default on (a) above the Deputy Registrar of this court shall forthwith sign the said documents in favour of the plaintiffs.

c) The plaintiffs jointly and severally after they are registered as proprietors of the suit land shall not transfer to any other 3rd party, charge, sale or in any other way part with the aforementioned parcel of land pending the hearing and determination of the appeal by the defendant.

d) Costs of the two applications shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 18TH DAY OF MARCH 2021.

H.K. CHEMITEI

JUDGE