



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO. 148 OF 2010

MARY WANGECHI NYAMU (Suing as the legal representative

of PAULINE WANGARI NYAMU).....1ST PLAINTIFF/APPLICANT

GRACE MURAGE.....2ND PLAINTIFF/APPLICANT

VERSUS

PATRICK MURIITHI GATUNGU.....DEFENDANT/RESPONDENT

RULING

1. The application is premised under the provisions of Section 73 of the of **Civil Procedure Act**; in essence the Applicants seek an order to review of the Order of this Honorable Court made on the 6th May, 2019 to include an order that the OCS Kerugoya Police Station to provide security during the sub division of Land Parcel No. Mutira /Kirunda/702 (**'the suit property'**);
2. The Application is supported by grounds on the face of the application and on the affidavits made by Grace Murage, the applicant herein and David Murimi, the registered surveyor, herein;
3. An order for review is sought made by this Honorable Court on the 6th May, 2019 in which it declined to direct the Officer in Charge of Kerugoya Police Station to assist in providing security to the County Surveyor to enable the partitioning of the parcel of land known as Land Parcel No. Mutira /Kirunda/702, the subject property herein.
4. At the hearing hereof the applicant was represented by Ms Wangechi whereas the respondent was not in attendance neither had he filed any replying affidavit or grounds of opposition in response; counsel for the applicant made oral presentations; hereunder is a summary of the submissions;

APPLICANT'S SUBMISSIONS

5. The applicants' case is that a judgment was rendered on the 5/11/2015 whereby this Honorable Court ruled that the subject property be divided equally between the applicants and respondent; thereafter the respondent refused to execute the requisite documents for subdivision or surrender his documents to facilitate the subdivision warranting the intervention by the court which gave orders that the Deputy Registrar do sign them and the required documents be dispensed with during subdivision;
6. However, the court declined to give security to the surveyor during subdivision; the respondent has threatened the surveyor and the applicants and has also denied them access to the subject property;
7. The surveyor swore an affidavit in which he deponed to having been instructed by the applicants to implement the decree and to divide the subject property into three (x3) equal portions;
8. On the 15th August, 2020 the Surveyor in the company of his colleague one George Karubiu Ngiri visited the land for the purpose of partitioning the same but was unable to carry out the assignment as he was threatened with death by the respondent's children who confronted him with a crowd of 10 people who were armed with pangas; this incident was reported to Kagumo Police Station vide OB No.14 of 13/08/2020 extract of which is annexed to the affidavit;
9. The applicants pray for a review of the ruling date 10/04/2019 and for orders that the OCS Kerugoya Police Station to provide security during the subdivision process.
10. That their application seeking for police security was disallowed and the only remedy for their grievance is to seek for an order of review

or setting aside of the order of 10/04/2019; and prayed that the application be granted for the ends of justice to be met;

ISSUES FOR DETERMINATION

11. After taking into consideration the of the applicants submissions this court finds the following only one issue for determination;

- (i) Whether to review the order of 10/04/2019;

ANALYSIS

12. The principles for review of an order or decree of the court are; that there must be discovery of new and important material or evidence, which, after the exercise of due diligence, was not within the knowledge or could not be obtained and produced at the time the order was made; or that there must be a mistake or error apparent on the face of the record; or for any other sufficient reason.

13. After hearing submissions of Counsel for the applicant and it is noted that there is no contention of discovery of new and important material or evidence, which, after the exercise of due diligence, was not within the Applicants' knowledge or could not be produced at the time the order was made; there is also no contention of any mistake or error apparent on the face of the record;

14. The only reason alluded to is the frustration encountered by the Applicants and the surveyor in trying to sub-divide the property.

15. It is this court's considered view that this does not qualify as a sufficient reason for the orders sought of review.

16. The fundamental duty of this court is to do justice between the parties and denial of this relief is found to limit and prejudice the applicants' interest in the property; from the circumstances of the case the material, placed before this court and in order to meet the ends of justice and also to bring closure to this matter this court is inclined to reconsider the application requesting for security to enable the surveyor execute his duty;

17. For the forgoing reasons this court is satisfied that there is bona fide reason to grant the surveyor provision of security whilst visiting the subject property for purposes of partitioning the property so as to give effect to the determination made 5/10/2015.

FINDINGS AND DETERMINATION

18. For the foregoing reasons this court makes the following findings and determination;

- (i) This court finds that the application is partially successful;
- (ii) The application relating to provision of security is found to be meritorious and is hereby allowed;
- (iii) This court directs the Officer in Charge of Kerugoya Police Station to provide the Surveyor with security whilst visiting the land Parcel No. Land Parcel No. Mutira /Kirunda/702;
- (iv) The applicants to bear the costs of providing the security.

It is so Ordered.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 20TH DAY OF MAY, 2021.

HON.A. MSHILA

JUDGE