



Lynch v Mwale & another (Environment & Land Miscellaneous Case E084 of 2023) [2023] KEELC 19162 (KLR) (24 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19162 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E084 OF 2023**

EK WABWOTO, J

JULY 24, 2023

BETWEEN

GRACE LYNCH APPLICANT

AND

MAURICE MWALE 1ST RESPONDENT

JAMES KEBUONGE 2ND RESPONDENT

RULING

1. The Applicant filed a Notice of Motion Application dated March 22, 2023 which was accompanied by a Supporting Affidavit sworn by Brenda Sheila Wanjira, wherein the Applicant sought the following orders:
 - i. That an order do issue to the Land Registrar at Nairobi that any further and or pending transactions upon the properties Nairobi/block 83/1120 And Nairobi/block 83/1117 be hereby stopped pending the hearing and determination of this Application.
 - ii. That service of this Application be dispensed with.
2. The Application was premised on the following five main grounds that:
 - i. The Applicant was the registered owner of properties Nairobi/block 83/1120 And Nairobi/block 83/1117 until she got into a sale agreement with the Respondents.
 - ii. The Applicant was leaving for the United States of America where she currently resides, when she decided to entrust the conveyance transaction to her advocates at the time.



- iii. The Applicant unfortunately learnt that the advocates went ahead to transfer and process the title in the name of Grace Covenant Church, who were in contravention with the payment terms set out in the agreement.
 - iv. The Applicant engaged the Respondent and agreed that they would pay the balance of the purchase price.
 - v. The Applicant has recently found out that the Respondents have sold both properties and refuse to pay the balance of Kshs 3,700,000/-
3. The Application was opposed. In opposition to the said application, the Respondents filed grounds of opposition dated June 16, 2023 and a Replying Affidavit sworn on June 15, 2023 which are on record and the court has duly considered.
 4. Pursuant to directions issued by this court on April 25, 2023, it was directed that the application be canvassed by way of written submissions.
 5. The Applicant filed submissions dated May 30, 2023 filed by Wanjira & Mugambi Advocates LLP in which it was emphasized that the Applicant was apprehensive that should the property be transferred to new buyers, she would lose the leverage on the Respondents who had promised to pay the balance. It was also submitted that the Applicant had opted to apply for a caution as their best option to pressure the Respondents to make good on their responsibility. The Court was called upon to consider the circumstances where a party can apply for a caution or restriction on land under Section 76(2) of the [Land Registration Act](#).
 6. The Respondents filed submissions dated June 16, 2023, filed by Billy Amendi & Co. Advocates in which it was submitted that the sale was finalized through the Applicant's Advocates office, the Applicant signed the transfer papers and the Land Title Deed issued, therefore, the orders sought would be in vain. Relying on Order 1, rules 1-7 of the [Civil Procedure Rules](#), it was argued that a party could only seek relief from a party that was enjoined in a suit. In light of this, the court could not issue orders to the Land Registrar who was not a party to the suit and therefore the application should be dismissed with costs.
 7. I have read the application, the rival submissions and supporting documents and the main issue for determination is whether the Applicant has met the threshold to be granted the orders sought as prayed?
 8. It is undisputed that the Parties entered into a sale agreement dated July 31, 2019. The main contention lies in determining whether the Respondents completed their obligations under the Agreement and whether the Applicant was cognizant of the transfer and the legality of the transfer. While that remains an issue for consideration, the Applicant has sought orders which if granted will require enforcement or compliance by the Land Registrar who is not a party to this suit. The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule.
 9. Additionally, the orders sought are aimed at presuming a final determination on the legality of the transfer process. I am of the opinion that such a presumption would be against the principle of natural justice and tantamount to condemning a party unheard.
 10. In view of the foregoing, the Court finds that the Application dated March 22, 2023 is unmerited and the same is hereby dismissed with no order as to costs.
 24. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2023.

E. K. WABWOTO

JUDGE

IN THE PRESENCE OF: -

N/A FOR THE APPLICANT

MR. AMENDI FOR THE 1ST AND 2ND RESPONDENTS

COURT ASSISTANT; CAROLINE NAFUNA

