



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 375 OF 2009

IN THE ESTATE OF HIRAM MURURU CHEGE (DECEASED)

LUCY WANJIKU CHEGE

KEVIN KARAGU CHEGE.....APPLICANTS

VERSUS

TABITHA WAKIYA KABUTHIA.....RESPONDENT

R U L I N G

1. The application subject of this ruling is a Chamber Summons dated 20th September, 2018 seeking for orders that the Respondent **Tabitha Wakiya Kabuthia** and one **Kevin Karagu Chege** do vacate **Plot No. 1370 Kahawa Sukari** within the next 30 days to enable the said property be sold in accordance with the ruling of 25th September 2015 and a consent order entered into by the parties on the 24th of September 2018 in the alternative the Respondents do pay Kshs.45,000/= a month as rent back dated to the date of judgment. Further in the alternative the Applicants be allowed to move into the premises.

2. The application was supported by the affidavit of **Lucy Wanjiku Chege** sworn on 20th September 2018, who deposed that according to the ruling of 25th September, 2015 the property in contention was to be sold and the proceeds shared amongst the beneficiaries, however, since then the Respondent and her son continue to occupy the said property to the detriment of the applicants and further the respondent has frustrated efforts to sale the property. It is difficult to sell the same as no one is willing to buy a property in contention, as a result many opportunities have been lost in the circumstances.

3. The application is objected to by a replying affidavit of the Respondent who states that she is the registered owner of the subject property. That since the ruling she has come across a title issued in her name since 2009 and therefore any challenge to the title ought to be filed in the Environment and Land Court. As a consequence, this court lacks jurisdiction to deal with the property subject matter.

4. From the onset, I understood the application before me to be seeking to enforce the ruling made by this court after the court considered evidence placed before it by both parties which ruling was delivered on 25th of September, 2015. The ruling remains in force todate.

5. The Respondent alludes to the fact that she has new evidence and is likely to seek a review, the second issue she raised is lack of jurisdiction by the court to handle the dispute involving the property subject matter.

6. There is no application for review on record and I will not pre-empt nor dwell with a matter not before court.

7. Secondly the parties have been litigating since 2009. G.B.M Kariuki J (as he then was) delivered a judgment on 10th of April, 2013,

Musyoka J on 25th of September, 2015 the respondent submitted to the jurisdiction of this court all along and accepted findings made especially by Musyoka J as regards the property subject matter since no appeal has been preferred.

8. It is dishonest on the part of the respondent and unprocedural to raise the issue of Jurisdiction at a time when the applicants have sought to enforce an order that is favourable to them.

9. It is a travesty of justice when parties who submit to court fail to **comply with court orders and in this instance for well over 3 years.**

10. Notable also is that by consent of the parties an order issued on the 24th of September 2018 requiring a valuation report be done and which is now on record to pave way for the intended sale.

11. The actions of the Respondent and her son in the circumstances of **this case demonstrates their defiance against the face of an existing court order and that they would go to whatever length to defeat the same.**

12. I find the application by the Applicants reasonable, they have been Patient since 2015. Secondly, litigation must come to an end and successful litigants must be allowed to enjoy fruits of a favourable order.

13. Consequently, I grant prayers 2, 3 and 4.

Further I direct that the rent arrears be recovered from the Respondent's share of the sale price.

14. Costs to the Applicants in any event.

DATED, SIGNED and DELIVERED at NAIROBI this 14th DAY OF March, 2019.

.....

ALI-ARONI

JUDGE