



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

DIVORCE CAUSE NO.2 OF 2002

PWK..... APPLICANT

-VERSUS-

JKG.....RESPONDENT

RULING

On the 1st July 2015 the court of appeal in Civil Appeal no 33 of 2014, between the same parties, the Court of Appeal set aside the judgement of this court dated and delivered on the 21st February 2014. The same was substituted with the following orders;

- a. Nyeri Municipality / Block [particulars withheld] and Nyeri Municipality Block [particulars withheld] registered in the names of [particulars withheld] Chemists Limited be and are hereby transferred to the appellant
- b. The half share in Nyeri Municipality Block [particulars withheld] registered in the name of the respondent be and is hereby transferred to the appellant.
- c. The parties to bear their own costs.

Following those orders, the appellant filed an application Notice of Motion on 31st August 2016, under Order sections 3,3A of the Civil Procedure Act, and order 51 of the Civil Procedure Rules, seeking the following orders:

1. That the Honourable Court be pleased to authorize the Deputy Registrar to sign all the relevant documents including the application forms for Land Control Board, transfer forms and any other necessary document required on behalf of the Respondent JKG to give effect for the transfer of land parcels NYERI MUNICIPALITY BLOCK [particulars withheld], NYERI MUNICIPALITY BLOCK [particulars withheld] AND NYERI MUNICIPALITY/BLOCK [particulars withheld] to the applicant herein.
2. That this Honourable Court be pleased to order that the Nyeri Municipality Land Control Board do dispense with the attendance of the Respondent JKG during the land control board meetings to enable the transfer of land parcel NYERI MUNICIPALITY BLOCK [particulars withheld], NYERI MUNICIPALITY BLOCK [particulars withheld] AND NYERI MUNICIPALITY/BLOCK [particulars withheld] to the applicant herein.
3. That the monies held jointly in the names of Gori, Ombongi & Company and Gathiga Mwangi & Company at HFCK NYERI BRANCH ACCOUNT NO. [particulars withheld] be released to M/S Gori, Ombongi & company Advocates forthwith.
4. That this Honourable court be pleased to further order that the Land Registrar Nyeri to dispense with the production of the original Title Deed to land parcel number NYERI MUNICIPALITY BLOCK [particulars withheld], NYERI MUNICIPALITY BLOCK [particulars withheld] AND NYERI MUNICIPALITY/ BLOCK [particulars withheld] the personal identification number (PIN) Certificate Photostat copies of identity card and passport size photograph of the respondent JKG while registering the issuing title Deeds to the applicant.

This application is based on the grounds:

- a) That judgment was delivered on 1st day of July, 2015
- b) That the judgment herein cannot be given effect unless the orders sought are granted
- c) That it is not possible to procure the signatures, attendance to land control boards and the requisite documents to wit original Title Deeds, PIN, Photostat copy of identity card and passport size photograph of the respondent JKG.

d) That the respondent be condemned to pay costs of this application for not abiding by this honourable court's order.

It is supported by the affidavit of Christopher Kariuki Ngatia the 'true and lawful attorney and agent of the applicant', having been given the power of attorney to deal with the matter.

He depones that the respondent has delayed the execution of the above orders, yet the applicant is in need of the monies for treatment.

The same was brought under certificate of urgency and first placed before Mativo J on the 2nd September 2016. He declined to certify the same as urgent. Counsel for the applicant was directed to invite the other party to fix a date for hearing of the application inter partes.

In the meantime, the respondent filed an application in the same court for leave in **Civil Application Sup. no 3 of 2015** to appeal to the Supreme Court from the Judgment of the Court of Appeal dated 1st July 2015.

In its ruling dated 2nd December 2015, the Court of Appeal found the application to be lacking of merit and dismissed it with costs to the respondent, the applicant herein.

The respondent was dissatisfied and went on to file **Supreme Court of Kenya Civil Application no. 1 of 2016** dated 19th January 2016 and filed on the 22nd of January 2016, seeking extension of time to file an appeal and review of the decision of the Court of Appeal dated 2nd December 2015.

He also filed on 10th January 2017, another application Notice of Motion dated 4th January 2017 seeking stay of the execution of the orders emanating from the Court of Appeal judgment, on the ground that the application pending before the Supreme Court was yet to be determined.

On the same 10th January he filed a replying affidavit to the present application, sworn on the 5th January 2017. He contended that the application was premature as the applicant had never served him with any decree in compliance with Order 22 of the Civil Procedure Rules, neither had he been served with any notice to show cause. In any event, he had an application pending before the Supreme Court, which needed to be determined before any other action could be taken in this matter.

On 12th January 2017, the above Notice of Motion was placed before Justice Ngaah who certified it as urgent and fixed it for *inter partes* hearing on the 6th February 2017. However, everything was held in abeyance awaiting the decision of the Supreme Court.

On the 24th March 2017, the Supreme Court spoke viz;

Orders: The application dated 19th January 2016 is hereby dismissed with costs.

Reasons: No compelling reasons have been presented to the Court as a justification for the inordinate delay.

The respondent herein has reached the end of the road in his efforts to have the Court of Appeal orders, which the applicant herein seeks to execute, set aside.

From the foregoing, this has been a long winded matrimonial cause that must surely come to an end. The applicant has waited for long for the fruits of her judgment and it is only fair that the matter comes to an end.

From the record I find that it is true that no decree appears to have been extracted and served on the respondent. Nevertheless, that ought not to be a reason for further delay.

I therefore allow the application in the following terms;

1. That with regard to prayer no 2. the decree be extracted and served upon the respondent together with the requisite documents of transfer for his execution and necessary action, ***within the next 15 days***. The respondent to execute and return them, with the necessary documents to the applicant's counsel ***within 15 days of service***. In default, the Deputy Registrar is authorised to do so on his behalf subject to confirming the compliance by the applicant's counsel with the first part of this order.

2. Prayers no. 3 and 5 are allowed as prayed as they will follow prayer no. 2 above.

3. Prayer no. 4 is granted as prayed.

4. The respondent to bear the costs of this application.

Dated, delivered and signed this 29th Day of January 2018 at Nyeri.

Teresia M Matheka

Judge

Court Assistant Hariet

Mr. Murang'a holding brief for Mr. Gori for the applicant

P W Present