



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 208 OF 2004

NAKURU TEACHERS HOUSING CO.OPERATIVE SOCIETY LTD.....APPLICANT

-VERSUS -

KANJOYA ENTERPRISES LIMITED.....RESPONDENT

RULING

1. The application before me dated 14/9/2017 seeks the following orders:-

(a) – Spent

(b) That the honourable court do issue an order that the Deputy Registrar of the High Court do sign the relevant transfer documents to enable EMENKEI TECHNO SERVICES LIMITED licensed land surveyors to excise 6.82 hectares out of **LR No. MITI MINGI/MBARUK BLOCK 8/1604** measuring 20 acres namely

(i) Land Board Consent forms to subdivide **LR No. MITI MINGI/MBARUK BLOCK 8/1604**

(ii) Application for subdivision of **LR No. MITI MINGI/MBARUK BLOCK 8/1604** from the county government

(iii) Scheme plan by a registered physical planner.

(iv) Mutation survey and all survey records

(v) Transfer forms.

(c) That the Officer Station Mwariki Police post does provide security to **EMENKEI TECHNO SERVICES LIMITED** the surveyor during the survey exercise.

(d) That the cost be in the cause.

2. It is brought on the grounds that:

(i) That judgment was delivered on 29th January 2015.

(ii) That the defendant/respondent was given an option to either compensate the plaintiff/applicant with an equivalent portion of land i.e 6.82 hectares and or the defendant to pay the value of money equivalent to the portion to the portion measuring 6.82 hectares to be assessed by the valuer at market rates.

(iii) That the respondents failed to meet any of the conditions of the judgment.

(iv) That the court did deliver its ruling on 6th April and allow Tango Auctioneers to attach 6.82 hectares out of **LR No. MITI MINGI/MBARUK BLOCK 8/1604**.

(v) That the respondent cannot voluntarily sign the necessary transfer documents to enable the excision of 6.82 hectares from **LR No. MITI MINGI/MBARUK BLOCK 8/1604**

3. The background to the application is as stated in the supporting affidavit sworn by one Solomon Kibaki and submissions filed on 16/10/2017 by Nancy Njoroge & Co. Advocates for the applicant. Judgment in the suit was delivered on 29/1/2015. The resultant decree was drawn in terms that:

(a) That the defendant is directed to provide the plaintiff with an equivalent suitable portion of land for residential purposes within 60 days hereof.

(b) In the event that there be default, then the defendant must refund the plaintiff the value equivalent for the said portion at current market prices which should be assessed by a valuer mutually agreed on by both parties within 30 days after lapses of the period mentioned in (a) above

(c) Cost of this suit are awarded to the plaintiff.

4. The record shows that the parties subsequently agreed and filed a consent on 18/6/2015 in which they agreed at Kshs. 58,975,000 being the final figure excluding interest payable to the plaintiff by the defendant and that the costs were to be assessed by court.

5. The application is opposed by the respondent. In an affidavit sworn by **Maina Wanjigi**, a director of the defendant company on 26/9/2017, the respondent admits owing the decretal sum. They however aver that the excise of 6.82 hectares from **LR No. MITI MING/MBARUK/BOCK 8/1604** will be prejudicial to the respondent as the value of the land has appreciated. That the respondent stands to suffer irreparable loss and damage if the orders sought were granted. Further the deponent has stated that the defendant had previously and on numerous occasions offered alternative land to the applicant but which offer the applicant unreasonably declined.

6. The respondent also filed submissions dated 13/12/2017 through their advocates **Kembi – Gitura & Co.** The submissions reiterate the averments in the replying affidavit. In addition they submit that a stay order was granted by the court on 11/4/2017 staying the excision and sale of the suit land and that the respondent was now willing to pay the decretal sum of Kshs. 58,975,000 to the applicant.

7. I have considered the application. The only issue before me is whether or not the orders sought are merited.

8. It is common ground that applicant got judgment in its favour way back in 2015. It has not been shown to me that the judgment was or has been appealed. It is also common ground that the parties entered a consent for either payment of decretal sum or excise and transfer of the suit land. In addition, I have perused the file and observed that the parties have prosecuted several applications revolving around the execution of the said judgment.

9. The respondent has drawn my attention to a ruling dated 11/4/2017 which granted stay of execution of the court's (**Mulwa .J**) ruling. I have perused the ruling dated 23/5/2017 in respect of the defendant's (now respondent) application filed on 11/4/2017 and argued on 2/5/2017. The court granted conditional stay in terms that "the full decretal sum of Kshs. 60,275,000 as at 18th June 2015 be secured by furnishing a bank guarantee for the said decretal sum by the applicant from a reputable bank to be agreed by both parties within 30 days of order and that non – compliance and/or default shall render the conditional stay of execution order to lapse."

10. It is clear from the order above that the said order lapsed. The respondent has not shown that they complied with the conditions.

11. My consideration of the respective affidavits and submissions and perusal of the file has led me to the one inescapable conclusion that the respondent was not willing to execute the transfer documents of the suit property. **Order 22 of the Civil Procedure Rules** enjoins the court to assist the successful litigant realize the fruit of their judgment.

12. For the reasons above, I find the application dated 14/9/2017 merited. It is allowed in terms of prayers (b) and (c). The applicant shall also have costs of this application.

Orders accordingly

Ruling signed at Garsen on.....day of2018.

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R. LAGAT KORIR

JUDGE

Ruling delivered dated and counter signed at Nakuru this 21st day of June, 2018.

.....

JANET MULWA

JUDGE

In the presence of

.....CA

.....for applicant

.....for respondent