



**Hinga v Gaitho Oil Limited (Environment & Land Case 1069 of 1998)
[2023] KEELC 22475 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22475 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1069 OF 1998
LN MBUGUA, J
DECEMBER 14, 2023**

BETWEEN

ANNE MUMBI HINGA PLAINTIFF

AND

GAITHO OIL LIMITED DEFENDANT

RULING

1. Judgment was entered in this matter on 4.7.2019. Four years later, the Plaintiff filed the Notice of Motion dated 28.7.2023 which is for determination. She seeks orders that injunctive orders be issued restraining the defendants from dealing with the suit property, that orders issued on 21.7.2023 be reviewed, that the caveat registered on the suit parcel, LR 12337/6 vide orders issued on 23.8.2012 be lifted and that the judgement of 4.7.2019 be set aside.
2. The application is based on grounds on its face and on the Plaintiff's supporting affidavit sworn on 28.7.2023. She avers that the purpose of the caveat registered on the suit property has since abated as the suit was heard and determined.
3. That in this court's judgement of 4.7.2019, the Defendant was directed to pay the balance of the purchase price within 90 days, but he has not complied, thus the transaction abated. The Plaintiff also avers that the Defendant is vandalizing the suit parcel by cutting down trees and has engaged a surveyor who has embarked on subdividing the suit parcel as he intends to sell the same to 3rd parties.
4. The application is opposed by the Defendant vide the replying affidavit sworn on 12.10.2023 by its director, one Florence Wairimu Mbugua. She avers that the Plaintiff did not disclose that she filed Civil Appeal No. 151 of 2020 on 31.3.2020 as well as civil application No. 312 of 2019 in the Court of Appeal and that the said pleadings were annexed in the letter dated 4.10.2019 addressed to the Deputy Registrar.



5. That once the Defendant received the Notice of Appeal dated 18.7.2019, it did not pay the balance of the purchase price which was approximately ksh.10 million and only discovered through the instant application that the Plaintiff was abandoning the appeals. She also avers that the Suit property is in Plaintiff's name and that since the Defendant has been in possession to date, it would not vandalize a property it has occupied for a period of over 26 years.
6. The application was canvassed by way of written submissions. The Plaintiff's submissions are dated 1.11.2023, where she argued that under Order 42 Rule 6 of the Civil Procedure Rules, an appeal at the Court of Appeal does not operate as a stay and neither does lodging a notice of appeal stop execution of the judgement of the High Court.
7. It is also submitted that equity aids the vigilant and not the indolent. The case of Ibrahim Mungara v Francis Ndegwa Mwangi [2014] eKLR as well as the case of Pauline Yebey & another v Estate of Kiprotich Letting represented by Anndrew Kipkoech Kiprono [2017] eKLR are relied upon.
8. On the issue of the caveat, it was submitted that the Defendant has by effluxion of time lost interest on the suit property, thus there is no need to protect it by way of caveat. It is further submitted that under Section 73 of the Land Registration Act, a caveat may be removed by an order of the court.
9. The Defendant did not file submissions.
10. I have considered all the arguments raised herein. In its judgment issued on 4.7.2019, this court directed the Defendant to pay the Plaintiff the balance of the purchase price within 90 days from the date of the judgement with interest at 20% from 20.12.1996.
11. The Defendant has admitted that it did not pay the said purchase price as directed by the court since the Plaintiff had filed a Notice of Appeal and an application for stay of execution at the Court of Appeal.
12. The Plaintiff's Notice of Motion is brought under Order 45 of the Civil Procedure Rules, which provision deals with reviews. The basis upon which the application is filed is that the defendant did not comply with the judgment. The provisions of Order 22 rule 18 of the Civil procedure Rules however provides for the procedure for execution of a decree that is more than 1 year old. The decree holder is required to issue a notice to the judgment creditor to show cause why the decree should not be executed. The Plaintiff's application fails for being unprocedural. See Moses Kipkurui Bor v John Chirchir [2019] eKLR and John Muhanda Muya & Another V Stanley K. Kuria & Another [2013] eKLR.
13. I must add that the plaintiff is guilty of material disclosure as particulars have been presented by the respondent indicating that the plaintiff had lodged appeals against the judgment. It emerges that the plaintiff was not keen to have the judgment executed.
14. On the issue of the caveat registered on the suit parcel, the record indicates that the same was registered pursuant to Justice G.V. Odunga's orders of 30.1.2013 and not on 23.8.2012 as claimed by the Plaintiff. Further, in its judgement of 4.7.2019, the court did not discharge the said caveat. The caveat's purposes have been overtaken by events and should be removed to give effect to the implementation of the judgment.
15. In the final analysis, the prayers sought in the application are dismissed except prayer no 4. Thus the caveat registered against the suit property is hereby discharged. Each party is to bear their own costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER, 2023
THROUGH MICROSOFT TEAMS.**



LUCY N. MBUGUA
JUDGE

