



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 20 OF 2011 (OS)**

**D E N .....PLAINTIFF**

**VERSUS**

**P N N.....DEFENDANT**

**RULING**

1. The plaintiff has come back with a Motion dated 27<sup>th</sup> June 2017 seeking review of the orders I made on 23<sup>rd</sup> June 2017, as well as fresh prayers. He would like the court to direct the Deputy Registrar to sign documents on behalf of the respondent to facilitate transfer of Nyandarua/[particulars withheld] to comply with the court order of 13<sup>th</sup> September 2016. He also seeks that the respondent and the children be ordered to move out of Nairobi [particulars withheld].

2. He argues in his affidavit in support that the court omitted in its ruling the subject of the review application to make orders with respect to Nyandarua/[particulars withheld]. He argues that he has since sold that property but he could not effect transfer as the signature of the Deputy registrar was a requirement. Regarding Nairobi [particulars withheld], he raises arguments similar to those made in the previous application. He also swore another affidavit in which he deposes that he had secured alternative accommodation for the respondent and the children.

3. In her reply to the application, through her affidavit sworn on 17<sup>th</sup> July 2017, the respondent contends that the application for review was not well grounded. She states that the grounds relied on pointed more to an appeal rather than review.

4. The Motion was argued orally on 13<sup>th</sup> July 2017.

5. I have carefully scrutinized the application, the supporting affidavits and the reply. Regarding Nyandarua/[particulars withheld] I agree that I did omit to make orders on the said property. That was inadvertent. I believe I can now revisit the matter. By my order of 8<sup>th</sup> September 2016 I had ordered as follows, according to the formal order extracted on 13<sup>th</sup> September 2016:

*‘THAT the Land Registrar responsible for Nyandarua County shall cause the caution against the title LR No. Nyandarua/[particulars withheld] to be removed forthwith and to thereafter cause the said property to be registered in the name of the Petitioner, DEN.’*

6. I see that the applicant alleges to have sold the property and complains that he cannot transfer the property to the buyers without the signature of the Deputy Registrar. There is no court order sanctioning the sale of the property, and therefore the court is not concerned about the alleged sale. It cannot therefore order the Deputy Registrar to execute any documents to facilitate transfer to third parties. The court has already made an order to facilitate registration of the applicant as proprietor of that property. The fact that he is having difficulties transferring the property to third parties is a matter that is not before this court, for the court never sanctioned any such sale.

7. One of the materials attached to the applicant’s affidavit is copy of a search certificate dated 12<sup>th</sup> June 2017. It indicates that the transfer to the name of the applicant from the joint names of the applicant and the respondent has not been effected, and it awaits a court order. There would be merit however if all he

seeks is that the transfer forms be signed by the Deputy Registrar to facilitate a transfer to his name.

8. On Nairobi [particulars withheld], should the applicant be dissatisfied with the orders that I made on 23<sup>rd</sup> June 2017 he is at liberty to appeal against them. I agree with the respondent that it has not been demonstrated that there was an error on the face of the record or discovery of a material fact that he could not access as at the date of the ruling. I see no basis upon which I can grant the orders sought with respect to that matter.

9. In the end I shall make final orders as follows:

**(a) That with regard to Nyandarua/[particulars withheld] I direct the Deputy Registrar to sign transfer forms to facilitate transfer of the said property from the names of the applicant and the respondent to that of the applicant;**

**(b) That my ruling and orders of 23<sup>rd</sup> June 2017 stand so far as Nairobi [particulars withheld] is concerned; and**

**(c) That costs shall be in the cause.**

**DATED, SIGNED and DELIVERED at NAIROBI this 1<sup>ST</sup> DAY OF AUGUST, 2017.**

**W. MUSYOKA**

**JUDGE**