



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL CASE NO. 4 OF 2014

JOHN NJAGI MWARA.....PLAINTIFF

VERSUS

WINCATE WANJIRA MWARA.....DEFENDANT

RULING

1. This is an application by the plaintiff/applicant seeking an order that the caution placed by the defendant on land parcel Nos L.R No. Gaturi/Weru/2729 and L.R No Nthawa/Riandu/375 and L.R No. Nthawa/Riandu/376 be removed forthwith, being prayer No. 1 in his notice of motion. The applicant has also sought an order that the Deputy Registrar of the High Court be authorized to sign the transfer forms for the same parcels of land, being prayer No. 2 in his notice of motion. And finally, the applicant seeks that an order be made for the provision of costs.
2. The application is grounded on the grounds set out on the face of the motion and the supporting affidavit of the plaintiff. Amongst the grounds advanced are that the defendant has refused to remove the said caution or caveats to enable the plaintiff to effect the transfer of the parcels of land to the respective parties as ordered by this court. The applicant has also stated that it is only fair and just that the orders sought be granted.
3. In his supporting affidavit, the applicant has stated that the ruling in this matter was handed down on 18th November 2015, which ordered the subject matrimonial properties to be sub-divided and distributed in terms of that ruling. The applicant has also stated that the properties were registered in his name and he intends to sub-divide and distribute them as ordered by the court. He has further stated that prior to the filing of the suit and the subsequent ruling, the defendant had placed a caveat/caution on some of the properties.
4. It is also in his affidavit that he had written to the defendant to remove the caveat/caution without success. It is for these reasons that he now seeks an order of the court to order for the removal of the caveat/caution. And finally, he has stated that he is apprehensive that the defendant may also not sign the requisite transfer forms and that is why he seeks an order of the court to authorize the Deputy Registrar to sign them as appropriate.
5. Counsel for the plaintiff/applicant filed written submissions while counsel for the defendant chose to rely on the defendant's replying affidavit dated 27th May 2016 in lieu of written submissions.
6. In her replying affidavit, the defendant has stated that she was satisfied with the ruling of the court that was delivered on 5th November 2015 in as far as the sharing of the matrimonial properties was concerned. She has also stated that she is ready and willing to give effect and implement the ruling of the court. She has also stated that when she consulted the surveyor and physical planner in respect of land parcel No. Gaturi/Weru/2729, she was informed that the land could not be sub-divided, because it would be uneconomical to do so due to its size and shape. This parcel of land has the matrimonial house, where she lives with the three children of the dissolved marriage.
7. Furthermore, she also states that the said parcel of land is valued at Kshs 5,400,000/- and that she is ready to buy the plaintiff's half share of Kshs 2,700,000/- in order to have the whole property to

- be retained in its present physical condition. She has also stated that the sharing out of the said property will necessitate the demolition of the matrimonial house on which she lives together with the children of the dissolved marriage who were left under her custody and care.
8. Furthermore and in the alternative, she states that she is ready to forsake her share of land parcel No. Gatari/Weru/4029 to the plaintiff so that the plaintiff wholly owns it. She is also ready to further forsake her whole share of land parcel No. Nthawa/Riandu/376 to be transferred to the plaintiff in order to avoid sub-dividing land parcel No. Gatari/Weru/2729 for the sake of preserving the residential home of the plaintiff's family. It is for these reasons that she has urged the court to grant her application in the interest of justice and fairness.
 9. I have considered the affidavit evidence of both parties. I have also considered the written submissions of the plaintiff. I find that the ruling of the court is not being challenged in terms of the sub-division and sharing out of the matrimonial properties. I also find that the defendant is not willing to fully implement the said ruling, despite her assertions to the contrary. Her refusal to remove the cautions placed on the suit premises is not justified. It seems to me that the defendant is really desirous of retaining land parcel No. Gatari/Weru/2729 in exchange of her shares in the other parcels of land.
 10. In the circumstances, taking into account the totality of the affidavit evidence and the submissions, I find that the defendant has no good reason to place cautions on the suit premises in view of the unchallenged ruling of the court. I therefore grant the plaintiff's prayers 1 and 2 of the notice of motion.
 11. There will be no orders as to costs as the parties are former married spouses, who separated recently.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **23rd** day of **JUNE 2016**

In the presence of the plaintiff in person and Mr. Ithiga for the defendant

Court clerk R Njue

J.M. BWONWONGA

JUDGE

23.06.16