



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC CASE NO. 39 OF 2019

MONICA JERUTO RUTO.....PLAINTIFF/RESPONDENT

VERSUS

SIMON NGUGI.....1ST DEFENDANT/APPLICANT

CHRISTOPHER IRUNGU.....2ND DEFENDANT/APPLICANT

ISAACK KIOMA.....3RD DEFENDANT/APPLICANT

AMOS MWANGI.....5TH DEFENDANT/APPLICANT

(Representing Nicholas Mwangi)

DENNIS OMONDI.....6TH DEFENDANT/APPLICANT

NJOROGE KINYANJUI.....7TH DEFENDANT/APPLICANT

CHARLES MUTISYA.....8TH DEFENDANT/APPLICANT

DENNIS MOKAYA.....9TH DEFENDANT/APPLICANT

CHARLES NJUGUNA.....10TH DEFENDANT/APPLICANT

RULING

1. This is a Ruling in respect of a notice of motion dated 8/7/2021 in which the Defendants/Applicants seek the following orders:-

1) Spent

2) *The Plaintiff/Respondent herein is restrained from selling, transferring, charging, pledging, leasing, or in any other manner interfering with the ownership, possession, occupation, and use of land parcel number **Eldoret Municipality Block 15/1753** pending interparty hearing and determination of the instant Application*

3) *A Notice to Show Cause be issued to the Plaintiff/Respondent herein to show cause why she should not be committed to a civil jail for failure to honour Judgment and Decree of this Honourable Court failure to which she be committed to civil jail.*

4) *The Deputy Registrar of the Environment and Land Court at Eldoret to execute all the documents to facilitate the subdivision of land parcel number **Eldoret Municipality Block 15/1753** and transfer of the resultant portions to the Defendants/Applicants as envisaged in the Judgement by Consent and Decree of this Honourable Court.*

5) *Costs of the Application be awarded to the Defendants/Applicants.*

2. The Plaintiff/Respondent had sued the Applicants in this suit seeking among other prayers eviction and general damages. The Respondent's agent had sold various portions of Eldoret Municipality Block 15/1735 to the Applicants. The suit against the Applicants was

compromised vide a consent dated 8/5/2019 whereby it was agreed that the Respondent was to resell the portions of land to the Applicants at a consideration of Kshs 480,000/=

3. The Applicants cleared their respective payments to the Respondent. The Respondent was to give completion documents to facilitate processing of individual titles. All the Applicants met their part of the consent but the Respondent has refused to meet her part of the consent. The Applicants learnt that the Respondent had started the process of obtaining a loan using the title to the suit property and that a valuation had been done at the request of Access Bank. (Kenya) PLC.

4. The Applicants therefore contend that if the Respondent was to be allowed to charge the title, the bank will exercise its statutory power of sale to their detriment. The Applicants are residing on their respective portions on the suit property where they have developed and are residing with their families. It is on this basis that the Applicants are seeking the orders herein above.

5. The Respondent has opposed the Applicants application based on a replying affidavit sworn on 20/10/2021. The Respondent contends that the Applicants' application consists of outright untruths which are meant to mislead this Court. The Respondent states that she has not defaulted in her obligations and that she is in the process of assembling completion documents which she will hand over to the Applicants' lawyer through her lawyer.

6. The Respondent further claims that she has asked the Applicants to meet with her to discuss on how to settle the issue but that the Applicants have refused to meet with her. The Respondent denies that she is in the process of obtaining financial facility from Access Bank (Kenya) PLC.

7. I have considered the Applicants' application as well as the opposition to the same by the Respondent. The parties herein had been directed to file brief written submissions on 30/12/2021 but as at the time of writing this ruling on 13/12/2021, no submissions had been filed and if any were filed, then they are not in the file. The only issue for determination herein is whether the Applicants have demonstrated the need for grant of the orders sought.

8. It is clear that this suit was compromised through a consent dated 8/5/2019. The Applicants have demonstrated that they have met their side of the consent. It is the Respondent who has not met her part of the consent. There is nowhere in the consent where it was stated that the Applicants were to meet with the Respondent to agree on how subdivision was to be carried out. The Respondent was simply to give completion documents to facilitate processing of individual titles.

9. Though the Respondent denies that she is in the process of obtaining a loan using the suit property, the Applicants have annexed a copy of a valuation report which shows that the suit property had been valued for purposes of granting a loan. The Respondent has no reason to hold on to the completion documents when the Applicants here met their part. These are some of the cases which waste judicial time unnecessarily when it should not be the case. I find that the Applicants' application is well merited. I make the following orders:

(a.) The Respondent is hereby restrained from selling, transferring, charging, pledging, leasing or in any manner interfering with LR No Eldoret Municipality Block 15/1753 other than facilitating transfer of the respective portions to the Applicants.

(b.) A notice to show cause is hereby issued to the Respondent to show cause why she should not be committed to civil jail for failure to honour the judgment entered herein.

(c.) If the Respondent does not provide completion documents to facilitate processing of individual titles to the Applicants within 30 days, the Deputy Registrar of this Court shall execute all the documents to facilitate the subdivision of Eldoret Municipality Block 15/1753 and transfer the resultant portions to the Applicants as envisaged in the Judgement by the consent and decree of this court.

(d.) The costs of this application are awarded to the Applicants.

It is so ordered

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF JANUARY 2022.

E. OBAGA

JUDGE

IN THE VIRTUAL PRESENCE OF:

MS. CHEPSIROR FOR RESPONDENT

COURT ASSISTANT – MERCY

E. OBAGA

JUDGE

20/1/2022