



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO.45 OF 2003

MARGARET KAREMA.....PLAINTIFF/APPLICANT

-VS-

JAMES MUTHURI.....DEFENDANT/RESPONDENT

RULING

The Applicant in this case has filed two Applications. The 1st Application is a Notice of Motion Application dated 7th December 2011, brought pursuant to Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3, 3A and 63 (e) of the Civil Procedure Act, CAP 21 of the Laws of Kenya, Sections 130 (a) and (d) of the Registered Land Act, CAP 300 of the Laws of Kenya. In that Application the Applicant has sought the following orders:

1. **THAT this honourable court be pleased to make an order for the removal, cancelling and/or lifting of the order of inhibition issued by this Honourable Court on 30th November 2004 against Land Parcel No. Nyaki/Mulathankari/100 to enable the Land Registrar, Meru Central to comply with the Decree of this Honourable Court issued on 3rd November 2011.**
2. **THAT costs of this Application be provided for.**

The gist of this Application is that on 30th November 2004, this Honourable Court issued inter alia an order of inhibition against Land Parcel No. Nyaki/Mulathnkari/100 at the instance of the Applicant and the suit was finally determined in favour of the Applicant on 3rd November 2011 and a decree issued to the effect that the title to the said land parcel do revert to the Applicant. The Applicant therefore contended that it was necessary for the order of inhibition to be cancelled, removed and/or lifted to enable the Land Registrar comply with the decree of this court.

The Application was opposed. The respondent through the Replying Affidavit dated 12/9/2014 and his submissions filed in court on 17th September 2014, urged that the application has no merit and that the same ought to be dismissed with costs. I have carefully considered the Application and the respective submissions by the parties.

It is not in dispute that upon the determination of the instant suit in favour of the Applicant, she commenced execution process but owing to the inhibition which she had placed on the suit property to protect her interest, she could not execute the decree. Save for the respondent generally stating that the application has no merit and should be dismissed with costs, the respondent has not demonstrated how the application lacks merit. It is a principle tenet of law that court orders should not be issued in vain as that

would be tantamount to an abuse of the court process. I see no prejudice that the respondent will suffer if the orders sought by the applicant are granted. To the contrary, the applicant will be left with a worthless judgment which she cannot execute if the orders sought are not granted. From the circumstances and in the interests of justice, it is only fair and equitable that the order sought be granted.

The second application is a Notice of Motion dated 5th December 2011, brought pursuant to the provisions of Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 1A,1B,3,3A and 63 (e) of the Civil Procedure Act, CAP 21 of the Laws of Kenya. In that Application, the plaintiff/applicant has sought inter alia an order transferring back the Title to land parcel No. Nyaki/Mulathankari/100 from the defendant to the plaintiff as per the judgment of the court and that the District Land Registrar, Meru, be directed to dispense with the requirement for the valuation of the said parcel and also dispense with the requirement for the payment of stamp duty thereof and further make an order that in transferring back the title to Land Parcel No. Nyaki/Mulathankari/100 from the defendant to the plaintiff as per the judgment of the court and the District Land Registrar Meru central be directed to dispense with the requirement for consent from the Land Control Board.

The said application is premised on the grounds inter alia that this Honourable Court delivered judgment on 3rd November 2011, in which it found that land parcel No. Nyaki/Mulathankari/100 belongs to the plaintiff and made an order that the title to the said parcel be transferred back to the plaintiff and that the requisite transfer forms have since been duly signed by the Executive Officer of this court as per the court orders, but the District Land Registrar, Meru Central District has declined to effect the transfer and insists that a valuation of the land ought to be done, that stamp duty be paid; that the transfer should be subject to consent from the Land Control Board. It is the applicant's contentions that in view of the fact the transfer herein is by way of court order, it will be necessary for the court to direct that the requirement for the Land Control Board be dispensed with. The applicant further contended that the transfer herein is meant to give back to the applicant, her title deed which had fraudulently been transferred to the defendant and it will not be fair and just to demand for stamp duty from the plaintiff as she is not buying the land but is just being given back her title deed, thus the court should direct that the requirement for a valuation and payment of stamp duty be dispensed with.

The application was opposed. It was contended for the respondent that the application lacks merit for the reason that the applicant is asking the court to do what it has no powers to do, that if the court grants the orders, it will be aiding the Applicant to breach the law; That though the respondent lost the case in the court of appeal, he has through his advocate filed a civil application No. 17/2014 for leave to file an appeal to the Supreme Court of Kenya.

I have carefully looked at the pleadings and the submissions by the respective parties. It is not in dispute that on 3rd November 2011, this Honourable Court ordered the suit property namely; Nyaki/Mulathankari/100 to be transferred back to the plaintiff/applicant and in default the Executive Officer of this Honourable Court be empowered to sign all the necessary relevant documents to facilitate the transfer of the said land back to the plaintiff, the court having found that the defendant/respondent had no good title to the suit property, having fraudulently obtained the same from the plaintiff applicant. The said judgment was upheld by the Court of Appeal on 18th June 2014.

It is therefore clear that the applicant is not buying the suit property and no consideration is changing hands. In my opinion and from the circumstances of this case, it would be manifestly unjust and unfair to demand that the applicant pay stamp or for the land registrar to demand for consent from the Land Control Board since the transfer in the instant suit is being executed pursuant to a court order. The transfer of the suit property is purely meant to return the title deed to the applicant as per the order of the court.

With regard to the respondent's submission that that the application is seeking orders directed to a person who is not a party to the suit, namely the Land Registrar, Order 1 Rule 9 of the Civil Procedure Rules provides as follows;

“No suit shall be defeated by reason of the misjoinder or non misjoinder of parties, and the court may

in every suit deal with the matter in controversy so far as regards the rights and interest of the parties actually before it..”

In my opinion and in light of the above cited provision, failure to enjoin the Land Registrar as a party to this suit is not prejudicial to the respondent and the respondent will not suffer any prejudice. In any event, the Land Registrar was duly served with the instant application on 12th November 2014, but filed no response.

With regard to the respondent's submissions that being dissatisfied with the judgment of the court of appeal he has filed an application seeking leave to prefer an appeal to the Supreme Court, it is instructive to note that the judgment of the Court of Appeal was delivered on 18th June 2014. Up to date, the respondent has not made any effort to prosecute the said application. There is no pending appeal in the Supreme Court. I find the respondents insistence that the applicant pay stamp duty to be sinister since whether the applicant pays stamp duty or not, the respondent will not suffer prejudice in any way. On the contrary, the instant application is only intended to give effect to the court's judgment.

For the foregoing reasons, I find the applications dated 7.12.2011 and 5.12.2011 to be meritorious and I make the following orders:

1. An order be and is hereby given that in transferring back the title to Land Parcel No. Nyaki/Mulanthakari/100 from the defendant to the plaintiff as per the judgment of the court herein, the District Land Registrar, Meru Central District be and is hereby directed to dispense with the requirement for the valuation of the said parcel of land and also dispense with the requirement for the payment of stamp duty thereof.
2. An order be and is hereby issued that in transferring back the title to Land Parcel No. Nyaki/Mulanthakari/100 from the defendant to the plaintiff as per the judgment of the court herein, the District Land Registrar, Meru Central District be and is hereby directed to dispense with the requirement for a consent from the Land Control Board.
3. An order be and is hereby issued removing, cancelling and/or lifting of the order of inhibition issued by this Honourable Court on 30th November 2004 against Land Parcel No. Nyaki/Mulathankari/100 to enable the Land Registrar, Meru Central to comply with the decree of this Honourable Court issued on 3rd November 2011.
4. The plaintiff/applicant will have costs of both Applications.

DATED SIGNED AND DELIVERED THIS 30TH DAY OF JANUARY, 2015.

R. P .V. WENDO

JUDGE

Nyaga Nyamu for plaintiff

Mr. Omari holding brief for Mr. Anampiu for respondent

Jane Court Assistant

R. P .V. WENDO

JUDGE