



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 3130 OF 1986
CONSOLIDATED WITH 1133 OF 1986

1. NELLIE WANJIRU KAMAU
2. SIMON GIKONYO GITAR.....PLAINTIFFS

VERSUS

1. KAMBO KINYANJUI
2. DANIEL STEPHEN KARANJA GICHUHO.....DEFENDANTS

RULING

1. A consent order was recorded in this matter on 7th November, 1995 in the following terms:

“i) That Kambo Kinyanjui, the first defendant in these suits do transfer plot number DAGORETTI/ T. 410 to Nellie Wanjiru free from encumbrances.

ii) That a prohibitory order do issue on plot number DAGORETTI/RUTHIMITI/409 prohibiting all dealings on the plot pending hearing and determination of the suit or further orders of this honourable court.

iii) That if Kambo Kinyanjui does not execute and sign all the necessary papers to effect the transfer of plot number DAGORETTI/T.410 to Nellie Wanjiru within 14 days of their delivery to her or her advocate the same be signed by the Deputy Registrar of this honourable court.

iv) That upon registration of transfer of the said plot in her favour Nellie Wanjiru to cease being a party to these proceedings.”

2. The 2nd plaintiff removed himself from this suit and the 1st and the 2nd defendants are now deceased. When this matter came up before my brother Honourable Justice Waweru on 25th June, 2014, the 1st plaintiff sought to execute the consent order. The court however questioned why it took her so long to move the court to effectuate the said order and directed that the 1st plaintiff file an application so that her request could be dealt with formally.
3. The 1st plaintiff thereupon filed a Notice of Motion dated 6th October, 2014 under Order 49 Rules 2 (b) and 3 of the Civil Procedure Rules seeking that the Deputy Registrar be directed to sign all the necessary papers to enable the transfer of plot No. Dagoretti/Rithimitu/ T410 to her in accordance to a consent letter dated 3rd October, 1994 and adopted by the Deputy Registrar on 7th November, 1995 as the court order.
4. The application is premised on the grounds set out on the face of the application and the facts

- deponed in the supporting affidavit of the 1st plaintiff sworn on 6th October, 2014. The 1st plaintiff attributed the delay in implementing the consent order to non-acquaintance with court procedures.
5. I am of the view that the purpose of this application was basically to explain the delay in the implementation of the order.
 6. Section 4 (4) of the Limitation of Actions Act (Cap 22) Laws of Kenya stipulate as follows:

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a sub-sequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”

7. A perusal of the court record reveals that the consent was recorded about 19 years back. In light of the aforesaid provision, this application cannot be entertained. It is accordingly dismissed with no orders as to costs.

Dated, Signed and Delivered in open court this 28th day of November, 2014.

J. K. SERGON

JUDGE

In the presence of:

.....for the 1st
Plaintiff