



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Case 368 of 2012

ELIMU SACCO SOCIETY LIMITED.....APPLICANT
VERSUS
PAUL W. MWANGI.....RESPONDENT
R U L I N G

1. The Applicant seeks by **notice of motion dated 27th June 2012** brought under **section 79(3)** of the **Cooperatives Societies Act** and **sections 3A, 48 and 98** of the **Civil Procedure Act** orders -

(a) That the court be pleased to adopt the order of the Cooperative Tribunal issued on 13th August 2009 and amended on 15th August 2009 as an order of the Court.

(b) That the court be pleased to direct the Deputy Registrar to execute the transfer documents on behalf of the Respondent.

2. The application is based on the grounds that -

(i) On 13th August 2009, the Cooperatives Tribunal issued orders authorizing the Applicant to sell the suit properties and the proceeds of the sale given to the applicant.

(ii) The applicant has now found ready buyers for the said parcels of land and deposits have already been paid.

(iii) The said transactions are in the transfer stage but the applicant cannot transfer the said parcels to the intended purchasers.

(iii) The applicant has been advised by officers at the land registry that as the sale is by virtue of a court order the transfers must be signed by the Registrar or Deputy Registrar of the High Court.

3. There is a supporting affidavit sworn on 9th July 2012 by **Julie Obel**, counsel for the Applicant. It is deponed that suit was instituted in the Co-operative Societies Tribunal after the Respondent defaulted in payment of loans advanced to him by the Applicant; that judgment was entered in favour of the Applicant when the Respondent failed to enter appearance; and that a decree has since been issued.

4. Section 9(3) of the Co-operative Societies Act states that:-

"(3) Where the Tribunal enters judgment in terms of the award together with costs, it shall issue a decree which shall be enforceable as a decree of a court."

3. Section 98 of the Civil Procedure Act provides:

"Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument the court may, on such terms and conditions, if any as it may determine, order the conveyance contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it."

4. The Respondent was duly served with this application. He did not file any papers in response; nor did he appear at the hearing thereof.

5. Having considered the application, I am satisfied that it has merit and should be allowed. The application is granted in terms of prayers 2 and 3. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF APRIL 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 19TH DAY OF APRIL 2013