



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL CASE NO. 535 OF 1999

EUSTACE MBURU.....
.....APPELLANT/RESPONDENT

VERSUS

IMMACULATE WANJINE MBURU.....
.....APPLICANT/RESPONDENT

RULING

There are two applications for determination before me one filed by the Respondent/Applicant a chamber summons dated 3rd June 2013 and a notice of motion filed by the interested party/applicant dated 24th September 2013.

The chamber summons dated 3rd June 2013 is brought under rules 3A of Civil Procedure Act enabling provisions of the Caps 21 laws of Kenya, seeking the following orders;

1. That this Honourable Court be pleased to order for transfer of KABARE/NYANGATI/2487 AND KABERE/NYANGATI/2744 from EUSTACE MBURU to IMMACULATE WANJINE MBURU.
2. That this Honourable Court be pleased to order that the Deputy Registrar of the High Court to sign all the relevant transfer documents to facilitate sale and transfer of L. R. No. KABERE/NYANGATI/2744 and KABARE/NYANGATI/2487.
3. That this honourable court be pleased to order the eviction of the appellant herein from KABARE/NYANGATI/2744 and KABARE/NYANGATI/2487 forthwith.
4. That the O.C.S Kerugoya police station to enforce the eviction.
5. That the costs of this application be provided for.

The application is based on the following grounds;

1. The appellant is still in possession and lives on the said parcels of land number KABARE/NYANGATI/2744 and KABARE/NYANGATI/2487 ever since 1999 when she was issued with warrants of sale.
2. The appellant has blatantly refused to hand over vacant possession or to transfer the above mentioned parcels of land and has resulted to intimidating and threatening any prospective buyers to visit the parcels of land.

The application dated 24th September 2013, is brought under order 42 rule 22 of the Civil Procedure Rules and Section 1A, 1B and 3A of the Civil Procedure Act, seeking the following orders;

1. That the firm of Ngugi Mwaniki & co. advocates be placed on record for the interested party applicant.
2. That this honourable court be pleased to enjoin the applicant herein as an interested party to this appeal.
3. That costs of this application be provided for.

The application is based on the following grounds;

1. That the interested party has purchased the properties herein and has proprietary interest to the same.
2. That the respondent is seeking a transfer of the said properties into her names.
3. That the applicant/interested party shall be prejudiced if the orders sought by the respondent are granted.

Having carefully perused this old file and read the parties affidavits filed this is the brief background that I find, the applicant sought to obtain maintenance falling in arrears from her husband. Vide an application dated 23rd December 1998 she sought the said orders application that was heard exparte. The said court erroneously gave the said orders. This led to an appeal by the husband Eustace who sought for stay of execution vide application dated 23rd December 1998. Eustace logged an appeal civil appeal no. 535 of 1999 seeking to be discharged from a court order dated 2nd March 2000 he claimed that since his children were already over 16 years old he was not obligated to maintain them. Eustace filed an application dated 22nd February 2000 seeking stay of execution. The same was heard by Justice Sheikh Amin who ordered him to pay KShs. 100,000/= to the Applicant and give a bank guarantee for the balance. Later Eustace made an application to the court of appeal for stay of execution alleging that he was unemployed and unable to satisfy the maintenance order. The judges found that his application lacked merit and dismissed the same with cost on 26th July 2000. The applicant Immaculate Mburu filed an application on 18th August 2003 seeking eviction orders and an order of transfer of the husband's property in her name. It is not clear whether this application was heard but there is an order by Justice Visram dated 20th January 2004 disallowing an application. Justice Visram as he then was stated that there was no order of decree giving the applicant the right to live in the suit land the same cannot be sustained. It appears that the parties have been silent until these two applications that are before me.

In the applicant's application dated 3rd June 2013 she seeks to transfer the parcels of land to her name and an eviction order against Eustace Mburu, however I find that there is no court order either in this file or from another court giving her possession of the said suit property or granting her an order to evict Eustace Mburu. What I gather is that she has an order for maintenance which she is yet to execute but cannot be executed in a manner she seeks in her application dated 3rd June 2013. I therefore find am unable to give the orders sought. The applicant should seek legal advice on how to proceed with execution if at all. Her application dated 3rd of June 2013 has no merit and has been dismissed with no orders as to costs.

In the application filed by the interested party the interested party states he has bought the parcels of land KABARE/NYANGATI/2744 and KABARE/NYANGATI/2487 and that he has taken possession. In my view the interested party appears to have proprietary interest in the said piece of land. Any orders given on the parcels of land will definitely affect him if he is able to prove he lawfully purchased the said piece of land. I therefore grant prayer 1 a, and b of the application dated 29th September 2013. Costs shall be in the cause.

Dated, signed and delivered this 2nd Day of December 2013.

R. E OUGO

JUDGE

In the presence of:

..... Applicant /Respondent

.....Appellant /Respondent

.....Interested Party

.....Court Clerk