



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 374 of 2010

WILFRED KOINANGE GATHIOMIPLAINTIFF

VERSUS

JMJ SPORTS ACADEMY LIMITEDDEFENDANT

RULING

1) The plaintiff/applicant has filed a notice of motion dated 19/9/12 under section 3A of the Civil Procedure Rules, seeking the following orders.

i. That this Court do order the Deputy Registrar of this Honorable Court to execute the relevant transfer document to facilitate registration of and reference number Limuru/Bibirioni/2223 in the name of the plaintiff.

ii. This honourable Court do order the land Registrar, Kiambu to issue a new title deed in the name of the plaintiff.

iii. That the costs of this application be provided for.

The application is based on the following grounds;-

i. That this suit was heard by this honourable Court and the defendant ordered to transfer the subject land to the plaintiff.

ii. The plaintiff has failed to execute the relevant transfer documents;

iii. It is only mete and just that the Deputy Registrar of this honourable Court be ordered to execute the relevant transfer and the land Registrar Kiambu issues a new Title Deed in the name of the plaintiff.

2) The application is supported by the supporting affidavit of Wilfred Koinange Gathiomi dated 19/9/2012. He depones as follows: That following the hearing of his application for summary judgment this honourable Court on 2/12/2011 ordered the defendant to transfer land reference number Limuru/Bibirioni/2223 to him. That he is informed by his advocates on record that on 13/7/2012 they forwarded the transfer document to Messrs Anambo & Company Advocates for the defendant with instruction that they cause the defendant to execute the said transfers. That he is advised by his said advocates that the said letter did not elicit any response from the defendant's advocates. That on 11/9/2012 he registered the said Court order at the Lands office, Kiambu. That he has since talked to the Land Registrar Kiambu who has insisted on a specific order requiring him to effect the said transaction. That since the defendant has completely failed to execute the said transfer and release the original title deed he pray that the Deputy Registrar of this honorable Court execute the said transfer. That he also

prays that the Land Registrar Kiambu be ordered to registrar the said parcel in his name and accordingly issue him with a new titled deed.

3) Mr. Jean Marie Abeels a director of the defendant filed a replying affidavit dated 22/10/2012. He responded as follows: That it is not true that the defendant/respondent deliberately breached the terms of the sale agreement but it is the plaintiff/applicants advocate M/S Morara Ngisa & Co. Advocates who is also the Financiers advocate who failed to secure the loan to pay for the balance of the purchase price thereby rendering the defendant/respondent unable to perform his obligations. That the defendant/respondent had paid 10% of the purchase price of the land which is Kshs.1,170,000/- and he requests for a refund of the same since he is not to blame for non-completion of the agreement and there was no orders issued by the Court that should be for forfeited. The Kshs. 1,170,000/= should be refunded to the defendant/respondent before the Court re-transfers the title into his name. That the interest of justice will be served if each of the parties are treated fairly because the counsel for Financier is the one to blame for non-performance of this agreement.

4) I have considered the two affidavits and Counsels submissions in Court. From the Court record Justice Mugo on the 2nd of December 2011 made an order restoring the suit property to the plaintiff as the rightful owner. She further ordered a re-transfer of the suit property L.R. Limuru/Bibirioni/2223 to be effected infavour of the plaintiff. The applicant avers that despite being served with the order the defendant has failed to execute the relevant transfer documents and hence this application. The defendant did not appeal against the said orders nor is there a stay of the said orders from the Court of Appeal. I also note that the defendants have not sought a review of the orders. In the replying affidavit filed the respondents seems to be averring details of what should have happened in the matter, which I find to be not relevant to this application. Further counsel for the respondent told Court that they did not object to the execution of the transfer. If the respondent has a claim against the plaintiff for monies paid during the transaction he should sue the defendant for it. I find that the applicant is entitled to the orders sought and grant prayers 1 and 2 of the application dated 9th of September 2012 as follows;

i. The Deputy Registrar of this Honorable Court shall execute the relevant transfer document to facilitate registration of and reference number Limuru/Bibirioni/2223 in the name of the plaintiff.

ii. The Land Registrar, Kiambu shall issue a new title deed in the name of the plaintiff .

The plaintiff is awarded costs of the application.

Orders accordingly.

Dated, signed and delivered this 20th Day of November 2012.

R. OUGO
JUDGE

.....For the Plaintiff/Applicant

..... For the Defendant/Respondent

.....Court Clerk