



**Nyamu & another v Wanyoike (Environment & Land Case
245 of 2015) [2022] KEELC 3737 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3737 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 245 OF 2015**

JO OLOLA, J

JUNE 9, 2022

BETWEEN

WILFRED WAMBUGU NYAMU 1ST APPLICANT

GEORGE WAMBUGU 2ND APPLICANT

AND

ELIZABETH WAMBUI WANYOIKE DEFENDANT

RULING

1. By the notice of motion dated July 13, 2021 as filed herein on August 5, 2021, Wilfred Wambugu Nyamu and George Wambugu (the plaintiffs/applicants) pray for orders:
 - (a) That a declaration do issue that by settlement of the decretal amount as ordered in the judgment on record, the defendant should vacate from the suit land LR No Kabar Block 2/ Mathira/820;
 - (b) That upon settlement of the decretal amount as ordered in the judgment on record the defendant do vacate from the suit land LR No Kabar Block 2/Mathira/820;
 - (c) That upon settlement of the decretal amount as ordered in the judgment on record, the caution lodged by the defendant against the suit land LR No Kabar/Block 2/Mathira/820 to be removed or withdrawn; and
 - (d) That costs be provided for.
2. The application is supported by a short affidavit sworn by the 1st plaintiff in which he avers at paragraphs 2 to 7 thereof as follows:
 - “ 2. That judgment was delivered herein on August 2, 2018 wherein an amount of Kshs 325,000/- costs and interest was ordered payable to the defendant;



3. That part of the decretal amount at Kshs 100,000/- has since been paid to the Defendant as per the slip annexed hereto marked “W1” while the balance of Kshs 386,600/- is available for defendant’s immediate collection as per the letter annexed hereto marked “W2”;
 4. That the defendant has otherwise todate failed to vacate the suit land or remove the caution against the title whereas the reason thereof is now obsolete;
 5. That the defendant’s said actions do not flow from the judgment as her entitlement to the land was not affirmed as she is wrongly maintaining;
 6. That it is thus only just that a declaration now do issue that the defendant has no interest in the suit land flowing from the judgment on record or otherwise, hence she cannot continue in possession of the land or maintain the caution subsisting against the title to the land on account of her claim herein; and
 7. That the orders sought are therefore necessary to fully execute, satisfy and discharge the judgment on record, and fully dispose of the matters at hand.”
3. Elizabeth Wambui Wanyoike (the defendant/respondent) is opposed to the application. In her replying affidavit sworn on August 3, 2021 she avers at paragraphs 2 to 7 thereof as follows:
- “2. That the judgment in this suit was delivered on the August 2, 2018 and costs were taxed on the July 3, 2019;
 3. That since July 3, 2019 only Kshs 100,000/- was paid *vide* cheque dated August 15, 2019;
 4. That *vide* cheque dated July 21, 2021 and which could not be accepted by the bank as it was wrongly addressed the applicants intended to pay what they believed was owing forgetting that since judgment delivery, the decretal sum has attracted interest. The said cheque was returned and the sum of money owing was indicated. Annexed is a copy of the cheque dated July 21, 2021 and the letter of July 30, 2021 marked EW1(a) and (b);
 5. That the application dated July 13, 2021 is clearly an abuse of the court process as it was drawn long before cheque was written and the reason I believe the cheque was deliberately wrongly written;
 6. That the applicants appear to believe that they can only satisfy the decree at their own time and thereafter shift the blame; and
 7. That if the applicants were not satisfied with the judgment as it was awarded, I am advised (sic) they ought to seek for a review but not to seek for orders they had not prayed for in the suit and or that were granted by the court.”
4. I have carefully perused and considered the application and the response thereto. I have equally perused and considered the submissions and authorities placed before me by the learned advocates acting for the parties herein.
 5. By this present application, the plaintiffs urge the court to make a declaration that by settlement of the decretal sum as ordered in the judgment, the defendant should vacate the suit land and remove the caution lodged upon LR No Kabar/Block 2/Mathira/820 (the suit property).



6. The judgment being referred to was delivered herein by the Honourable Lady Justice L N Waithaka on August 2, 2018. By the said judgment the learned judge dismissed the plaintiffs suit seeking an order of vacant possession against the defendant as well as an order to compel the defendant to remove the caution lodged on the suit property. On the other hand, the learned judge upheld the defendant's counterclaim in part ordering that she be allowed to recover the purchase price together with interest thereon at 30%.
7. A perusal of the said judgment reveals that the learned judge determined that the defendant's entry and occupation of the suit land was lawful as she had executed a sale agreement with the 2nd plaintiff. The only hurdle to the claim for the land to be transferred into the defendant's name was the fact that the parties had not obtained consent for the transaction from the Land Control Board.
8. By allowing the defendant to recover the purchase price together with interest, it was rather obvious that once the 2nd plaintiff complied with the requirements to refund the decretal sum together with interest, he could have his land back. By their submissions herein, the defendant actually understands that aspect of the judgment and it is her position that she is ready to vacate the suit property and remove the caution once the plaintiffs make good their obligation under the judgment.
9. A perusal of the application before me reveals that some three years after the judgment was rendered the plaintiffs are yet to settle the decretal sum. In this respect, I am in concurrence with the defendant that the application before the court is premature and nothing but an abuse of the court process. They have not paid the decretal sum and cannot be heard to come to court to make demands upon the defendant who is yet to reap the fruits of her judgment.
10. The motion dated July 13, 2021 is therefore unfounded and without basis. It is dismissed with costs to the defendant.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 9TH DAY OF JUNE, 2022.

In the presence of:

Mr. Theuri holding brief for Kiminda for the Respondent

Mr. C. M. King'ori for the Applicant

Court assistant - Kendi

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J. O. Olola

JUDGE

