



REPUBLIC OF KENYA



KENYA LAW
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**Wekesa v Nato & 10 others (Environment & Land Case 29 of 2015)
[2022] KEELC 12829 (KLR) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12829 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 29 OF 2015**

**BN OLAO, J
SEPTEMBER 30, 2022**

BETWEEN

FRANCIS SIMIYU WEKESA PLAINTIFF

AND

JOSEPH NAMASAKA NATO 1ST DEFENDANT
JACOB NATO 2ND DEFENDANT
SIMIYU NATO 3RD DEFENDANT
KADENGE JOEL NATO 4TH DEFENDANT
CARO YOHANA NATO 5TH DEFENDANT
EVANS SITUMA 6TH DEFENDANT
GEORGE PROTUS BARASA 7TH DEFENDANT
NJOKO KHAMA 8TH DEFENDANT
WABOMBA WEYAMA 9TH DEFENDANT
ROSE NAKHUMICHA NATO 10TH DEFENDANT
HUMPHREY WECHULI 11TH DEFENDANT

RULING

[1] *Vide* a judgment delivered on June 26, 2020, this court made the following orders in disposal of this suit: -

1. The plaintiff's suit is dismissed.



2. The Land Registrar Bungoma is directed to cancel the title to land parcel No Bungoma/Kabisi/323 issued on September 11, 2009 in the names of Francis Simiyu Wekesa and to issue a new title in the names of Joseph Namasaka Nato in trust for himself and his siblings.
3. The plaintiff shall meet the costs of this suit.

A decree was extracted and although the plaintiff filed a notice of appeal on July 8, 2020, it is not clear if any appeal was subsequently filed against that judgment.

[2] Following the plaintiff's refusal to execute the transfer documents in respect of the suit land, the 1st defendant moved to this court vide his notice of motion dated November 29, 2021 and predicated upon the provisions of section 3, 3A and 63(e) of the Civil Procedure Act seeking the following remedies: -

1. Spent
2. That this honourable court be pleased to authorize the deputy registrar to execute the transfer of land forms, application for consent of the Land Control Board and all the necessary documentation on behalf of the defendant/applicant (he must have meant on behalf of the plaintiff/respondent) to vest the title of the land parcel No Bungoma/Kabisi/323 to the defendant Joseph Namasaka Natoto hold in trust for himself and his siblings.
3. That costs be in the cause.

[3] The application is premised on the grounds set out therein and supported by the 1st defendant's affidavit.

[4] The gist of the application is that pursuant to this court's judgment delivered on June 26, 2020, the plaintiff has refused to execute the necessary documents to facilitate the transfer of the suit land in favour of the 1st defendant. The defendants are therefore unable to execute the decree in their favour. It is therefore in the interest of justice and fairness that the orders sought be granted. Annexed to the supporting affidavit is a copy of the judgment delivered on June 26, 2020.

[5] When the application was placed before me on March 8, 2022, I directed that it be served upon the plaintiff together with submissions within 14 days. The plaintiff would then have 21 days within which to file and serve his response and submissions. The matter would then be mentioned before the deputy registrar on April 13, 2022 to confirm compliance and take a date for ruling.

[6] However, it was not until August 2, 2022 that the defendants filed their submissions dated August 1, 2022 and though served on August 16, 2022, the plaintiff had not filed any response or submissions by September 19, 2022 when the file was placed before me for directions. Being satisfied that the plaintiff had been served with the application on February 4, 2022 and with the submissions on August 16, 2022, I directed that the ruling would be delivered on September 30, 2022 by way of electronic mail.

[7] It is clear from the above narrative that the parties herein completely failed to comply with the orders of this court. Section 1A (3) of the Civil Procedure Act enjoins parties or their advocates to assist the court to further the overriding objectives which include the just and expeditious resolution of disputes by complying "with the directions and orders of the court." That can only be achieved if submissions and other pleadings are filed and served as directed. Disputes can only be disposed off expeditiously if the parties and their advocates comply with the directions of the court. Similarly, parties who do not file their pleadings and other documents in time must bear in mind that they stand the risk of orders being issued against them without their input and with the attendant consequences.



[8] The notice of motion herein is not opposed because, notwithstanding that the plaintiff's counsel was served with the same way back on February 4, 2022 via e – mail as stated in the affidavit of service by Benjamin J Otsiula dated April 12, 2022, no replying affidavit or notice of preliminary objection was filed. It is clear that judgment was entered in favour of the defendants as indicated at the commencement of this ruling. Unless the plaintiff executes all the necessary documents to facilitate the transfer of the suit land to the 1st defendant, that judgment will remain hollow. As the plaintiff has declined to execute the necessary documents to facilitate the transfer of the suit land to the 1st defendant to hold in trust for the other defendants, this court must make any other appropriate orders to ensure that the defendants enjoy the benefits of that judgment. Section 3A of the *Civil Procedure Act* which the defendants have invoked in this application donates to this court “inherent powers” to make any “orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.” If the orders sought are not granted, the defendants will be denied justice yet they have a judgment in their favour which has not been appealed.

Further, it is provided in Section 98 of the *Civil Procedure Act* as follows: -

98: “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 that 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.”

In view of all the above, it is clear to this court that the plaintiff is entitled to the orders sought in the notice of motion dated November 29, 2022.

[9] The application is accordingly allowed in the following terms: -

1. Eliud Sahenyithe plaintiff herein shall within 14 days of service upon him of this ruling execute the transfer of land forms, application for consent of the Land Control Board and all other relevant documents to facilitate the transfer of the land parcel No Bungoma/Kabisi/323 in the name of Joseph Namasaka Natoto hold in trust for himself and his siblings.
2. In default of (1) above, the deputy registrar shall be at liberty to do so on behalf of the said Eliud Sahenyi.
3. No orders as to costs.

BOAZ N. OLAO.

J U D G E

30TH SEPTEMBER 2022

RULING DATED, SIGNED AND DELIVERED AT BUNGOMA BY WAY OF ELECTRONIC MAIL ON THIS 30TH DAY OF SEPTEMBER 2022.

BOAZ N. OLAO.

J U D G E

30TH SEPTEMBER, 2022.

