



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Misc. Appli. 720 of 2007**

**FRASIA WANJIKU KARIUKI..... APPLICANT**

**VERSUS**

**SIMON MUGO.....  
RESPONDENT**

**RULING**

By notice of motion dated 21.09.07 stated to be brought under Order L rule 1 of the Civil Procedure Rules and section 3A of the Civil Procedure Act, Cap.21, the applicant applied for the following orders:-

1. THAT service of the application be dispensed with in the first instance and this matter be certified as urgent.
2. THAT this honourable court be pleased to direct that the respondent Mr Simon Mugo removes/lifts the caveats he lodged on plot Nos. L.R. Dagoretti/Riruta 2794 and 2795 to enable the applicant comply with Hon. Justice D.K.S. Aganyanya's judgment delivered and dated 27.06.07 in High Court Civil Suit No.1186 of 2004 (Simon Mugo -vs- Frasia Wanjiku Kariuki alias Phrasia Wanjiku Kariuki).
3. THAT the costs of this application be provided for.

The grounds upon which the application is based are:-

- i. THAT it is not disputed that the Hon. Justice Aganyanya directed in his judgment that the respondent must be paid/compensated to a tune of Kshs.500,000/= out of the sale proceeds of either L. R. Dagoretti/Riruta 2794 or L.R. Dagoretti/Riruta 2795.
- ii. THAT the respondent, Simon Mugo maliciously and with an intention to defeat the Hon. Judge's judgment placed caveats on both plots hence rendering it difficult for the applicant to comply.
- iii. THAT the original file for the case (1186 of 2004) is now missing at the Central Registry – High Court, Nairobi.
- iv. THAT in the said judgment, time is of essence and is almost expiring.

The application is supported by the applicant's affidavit sworn on 21.09.07.

At the inter-partes hearing before me on 05. 03.08 of the application, the applicant was represented by learned counsel, Mr E.N. Ndwiga while there was no appearance for the respondent.

Applicant's counsel told this court that he was seeking prayer 2 in the application. There is in the court file an affidavit by Cosmas Makau, process server sworn on 29.02.08 to the effect that on 18.02.08 he served upon the respondent, Simon Mugo with hearing notice for this application on 05.03.08. However, the respondent did not appear at the hearing of the application on 05.03.08 and the hearing proceeded in his absence.

Applicant's counsel informed this court that Aganyanya, J (as he then was) had on 26.06.07 made a judgment in High Court Civil Suit No.1186 of 2004, Simon Mugo -vs- Frasia Wanjiku Kariuki alias Phrasia Wanjiku Kariuki allowing the plaintiff in that case either to sell Plot No.L.R. Dagoretti/Riruta 2794 or Plot No.L.R. Dagoretti/Riruta 2795 to raise the decretal amount in that case. Applicant's counsel reported to this court that the applicant herein had been unable to comply with Aganyanya, J's judgment because the respondent to the present application had lodged caveats on the two plots, thereby necessitating the present application.

Applicant's counsel urged this court to grant the notice of motion application dated 21.09.07.

I have given due consideration to the application, the grounds upon which it is based and the supporting affidavit.

There is in the court file a photocopy of Aganyanya, J's judgment of 27.06.07 in High Court Civil Suit No.1186 of 2004, Simon Mugo -vs- Frasia Wanjiku Kariuki alias Phrasia Wanjiku Kariuki. The learned Judge's order was:

'...for the Defendant to raise a sum of Kshs.500,000/= either through the sale of one of the suit plots, most probably Dagoretti/Riruta/2794, or from whatever other source to pay to the Plaintiff within six (6) months from the date of this Judgment so as to make him feel compensated for the resources he put in to acquire the suit plots — see Karanja v Karaja [1976] KLR 307.'

The respondent to the notice of motion application dated 21.09.07 now under consideration was served with hearing notice for the application. He filed no response to the application and never appeared at the hearing of the application on 05.03.08. This court does not, therefore, have the benefit of the respondent's explanation for his lodging of the caveats complained of against the titles to the two suit properties. The caveats seem to have jeopardized even the respondent's own interests in that the applicant herein says she has been unable to sell either of the two suit plots to raise money from which the Kshs.500,000/= payable under Aganyanya, J's judgment to the respondent herein would have been drawn.

In view of the foregoing, I hereby grant prayer 2 in the notice of motion dated 21.09.07 and direct the respondent, Simon Mugo to remove or lift the caveats he lodged on Plot No. L.R. Dagoretti/Riruta 2794 and Plot No. L.R. Dagoretti/Riruta 2795 within 14 days of service on him of the orders herein in terms of prayer 2 of the notice of motion application dated 21.09.07. Costs shall be in the cause.

Orders accordingly.

**Dated at Nairobi this 16<sup>th</sup> day of April, 2008.**

**B.P. KUBO**

**JUDGE**