



Angwenyi v Rayori ((Sued as Legal Administrator of the Estate of Milka Bochere Rayori (Deceased)) (Environment & Land Case 101 of 2021) [2022] KEELC 14979 (KLR) (24 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14979 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 101 OF 2021**

**JM KAMAU, J
NOVEMBER 24, 2022**

BETWEEN

JIMMY NURU ONDIEKI ANGWENYI PLAINTIFF

AND

DICKSON OMARI RAYORI DEFENDANT

(SUED AS LEGAL ADMINISTRATOR OF THE ESTATE OF MILKA BOCHERE RAYORI (DECEASED))

(Formerly at Environment and Land Court at Kisii Case No. 3 of 2019)

RULING

1. Judgement in this case was delivered in open court in the presence of the parties' respective counsel on 28/2/2022 in the following terms: -
 1. A declaration be and is hereby issued that the plaintiff is a bona fide purchaser for value of all that parcel of land known as Isoge Settlement Scheme/1000 measuring 10.9 hectares.
 2. An order for specific performance against the defendant to transfer land parcel No Isonge Settlement Scheme/1000 measuring 10.9 hectares to the plaintiff.
 3. Costs of the suit.
2. Subsequently, on 11/3/2022 the defendant's advocates filed a notice of appeal on 11/3/2022 within the timelines allowed by law. On 24/3/2022 the plaintiff's advocates filed a notice of address for service. Then on 15/7/2022 4 and half months after the judgement was delivered the firm of Omari Obare & Co Advocates sought leave to come on record on behalf of the defendant in place of the firm of M/s OM Otieno & Co Advocates. There was laxity in filing and prosecuting the application. The same is dated 16/7/2022 and was filed exactly a month later, on 15/7/2022. It was finally heard on October



11, 2022. The court graciously granted it. 10 days later the defendant filed an application for stay of execution which was heard by the court 10 days later. By this time, as the plaintiff deponed in court, execution of the decree had already taken place and the suit land LR No Isoge Settlement Scheme/1000 had been transferred to the plaintiff courtesy of the defendant's delay in moving the court for a stay of execution.

3. Stay of execution must be sought within a reasonable time after judgement/decree has been passed. Whenever an application was filed by the defendant herein after the decree, the court gave a very near date and always heard the said application on the first day it came before the court and the judgement/debtor application was ready to have it heard. But the defendant/judgement debtor cannot explain why it took him about 8 months to have the application filed and heard. This is inexcusable. Unfortunately for the judgement debtor, the property sought to be secured has already changed hands from the judgement debtor to the decree holder, courtesy of the delay by the judgement debtor. The court cannot reverse this. Equity aids the vigilant and not the indolent. We can only hope that the property remains in the decree holder's name until the hearing and determination of the intended appeal so that should the applicant herein succeed then it can be easily traced for a reversal of the execution. In the absence of that the applicant should still remain hopeful that should he succeed on appeal the court can still undo what has been done. With this admission by the decree holder that the property is now in his name, the application dated 16/6/2022 is hereby disallowed with no orders as to costs. Each party will bear his own costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 24TH DAY OF NOVEMBER 2022.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiff: Mr. Soire

Defendant: Mr. Omondi holding brief for Mr. Omari

