



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 943 OF 1989

ALICE WANGUI GICHUKA.....PLAINTIFF/APPLICANT

VERSUS

MWENJERA GICHUKA.....DEFENDANT/RESPONDENT

RULING

Judgement in this case was given by the Honourable Mr. Justice Githinji on 30th May, 1997. The Plaintiff/Applicant had claimed some land, on the basis of contract and/or trust. The suit was allowed with costs and the Defendant/Respondent ordered to transfer three acres of land to the Plaintiff/Applicant from land title No. Escarpment (Jet) Scheme/247 within 30 days and in default, the High Court Registrar to execute all the necessary documents on behalf of the Defendant/Respondent.

The present application was made by Chamber Summons, under Section 3A of the Civil Procedure Act, Order XXI, Rule 86(i) of the Civil Procedure Rules and all other enabling provisions of the law. The Chamber Summons is dated 21st July, 2003 and was filed on 29th August, 2003.

The Plaintiff/Applicant's prayers are as follows:

- (a) The Defendant be ordered to transfer and give vacant possession of three acres from land title No. Escarpment (Jet) 247 within 30 days from the date of the Court's Order;
- (b) In default, the Registrar of the Court do execute all the necessary documents on behalf of the Defendant;
- (c) The costs of this application be provided for.

The grounds of the application are -

- (i) the Plaintiff/Applicant has obtained judgement and decree in this matter wherein the Defendant/Respondent is ordered to transfer three acres to the Plaintiff/Applicant from L.R. No. Escarpment (Jet) Scheme/247.
- (ii) The Defendant/Respondent has resisted the Plaintiff/Applicant's possession of the three acres and has refused to transfer the three acres from L.R. Escarpment (Jet) Scheme/247 to the Plaintiff/Applicant.

The Plaintiff/Applicant has sworn a Supporting Affidavit the highlights of which are as follows:

- (a) on 30th May, 1997 judgement was entered against the Defendant to transfer the three acres to

the Plaintiff/Applicant within 30 days and in default, the Deputy Registrar to execute all necessary transfer documents on behalf of the Defendant, and a Decree was entered to that effect on 1st August, 1997.

(b) On 6th August, 1997, the Defendant appealed to the Court of Appeal against the Judgement and decree; but on 12th March, 1999, the Court of Appeal affirmed the judgement of the High Court.

(c) Since 1999 the Plaintiff/Applicant's efforts to have the land transferred have been resisted by the Defendant/Respondent who has even disobeyed orders of Court.

(d) The Plaintiff/Applicant is now advanced in years and she can only benefit from the orders of the Court if the property in question is urgently transferred, in accordance with the decision of the High Court.

The Applicant's case is unanswerable. Non-transfer of the land in question after the High Court decision in 1997 and the Court of Appeal decision in 1999, and in particular after the Decree entered on 1st August, 1997, is a serious violation of the law and a defiance of the binding authority of the Court. It cannot be allowed and, in the course of time, it will be necessary to affirm the authority of the Court against such instances of contempt.

For the purpose of this application, the following Orders are hereby made:

1. The Respondent shall transfer and give vacant possession of three (3) acres to the Plaintiff from Land Title No. Escarpment (Jet) 247 within 30 days from the date of this Order.
2. If there shall be default in performing the action ordered in No. 1 above, the Registrar of this Court shall execute all the necessary documents on behalf of the Defendant, and the full tenor and effect of Order No. 1 shall be carried out.
3. The Respondent shall bear all the costs of this application including the costs of the Applicant.

DATED and DELIVERED at Nairobi this 2nd February, 2004.

J.B. OJWANG

Ag. JUDGE

Coram: Ojwang, Ag. J.

Court clerk: Mutea

For the Applicant: Mr. Kariuki, Instructed by M/s V.E. Muguku Muriu & Co. Advocates

On record for the Respondent: M/s Mugo Kamau & Co. Advocates