



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL APPEAL NO. 74 OF 1979

HENRY GATHU THANDEAPPLICANT

VERSUS

BENSON KAMAU KARIGITHIRESPONDENT

RULING

The application subject to this ruling is under section 98 of the Civil Procedure Act and seeks an order of this court to authorize the Deputy Registrar or such other person as may be deemed appropriate to execute all forms, consent forms and/or any other documents for the purpose of facilitating transfer of L.R. No. Gatamaiyo/Kamburu/374 to the applicant.

The application was based on the grounds set out on the body thereof and also the supporting affidavit, mainly that the respondent had refused to sign transfer forms for the above parcel of land.

A replying affidavit filed in court on 24th September, 2002 raised the issue of the intended appeal against the court's order of 12th June 2002 and the time bar for this application.

Counsel for the parties appeared in this court on 27th January 2003 to either urge or oppose the application, and each of them relied on either the contents of the supporting or replying affidavits.

As far as I can say, this application is a simple one. The judgment intended to be executed was entered herein on 22nd February 1984. An application to review this judgment was dated 13th November, 1997. It was heard on 22nd May 2002 and a decision thereon dismissing the same was made on 12th June 2002.

Though counsel for the respondent filed a notice of appeal on 14th June 2002, there has not been any application for stay of execution of the said judgment.

Counsel for the respondents gives various reasons for this, none of which makes sense.

In fact he says after the ruling on the review application, he made an application for proceedings and judgment for the purpose of lodging the appeal but that no such proceedings had been supplied.

No copy of such application for proceedings, however, was shown to this court to confirm the allegation and hence, as things stand, this court cannot be sure there is indeed an intended appeal.

Counsel is aware after the ruling on the application for review, he made an application for stay which was refused and that therefore there is nothing to prevent the execution of the judgment of 22nd February 1984.

Counsel raises the issue of time bar but forgets that execution of the court order of 22/2/84 could not be effected when he was still pursuing an appeal against it in the court of appeal, and/or the review application.

The appeal was determined on 6th November 1997 while the review application was determined on 12th June 2002.

There can be no issue over whether Section 98 of the Civil Procedure Act applies because the order of 22nd February 1984 clearly stated that transfer of the suit parcel should be effected by the affected parties and that in his replying affidavit the respondent has not intimated that he has all along been willing to effect the said transfer.

The application dated 30th January 2001 and filed in court on 7th May 2001 has a lot of merit and I find no serious challenge to it.

I allow it and authorize the Deputy Registrar of this court to sign and execute all forms or other documents for the purpose of facilitating the transfer of L.R. No. Gatamaiyu/Kamburu/374 to the applicant.

There will, however, be no order for costs of the application.

Delivered this 30th day of January, 2003.

D.K.S. AGANYANYA

JUDGE