



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

MISCELLANEOUS APPLICATION NO. 23 OF 2019

PHILIP NGETHE.....APPLICANT

VERSUS

KENNETH MWANGI.....1ST RESPONDENT

COUNTY COUNCIL OF KAJIADO.....2ND RESPONDENT

LAND REGISTRAR (MINISTRY OF LANDS).....3RD RESPONDENT

RULING

What is before Court for determination is the Applicant's Chamber Summons application dated the 11th February, 2021 brought pursuant to Order 1 Rule 10 and Order 51 Rule 8 including Section 3A of the Civil Procedure Act.

The Applicant seeks the following orders:

- a) Spent.
- b) This Honourable Court do enjoin the Director Land Administration in this suit.
- c) This Honourable Court do issue an order directing the Land Registrar/ Director of Land Administration on the manner to enforce the order granted on 3rd April, 2019.
- d) That this Honourable Court do issue directing the office of Land Registrar/ Director of Land Administration to issue a new title forthwith.
- e) Costs be in the cause.

The application is premised on the summarized grounds that the Court had granted Orders directing the 3rd Respondent to transfer title to the Applicant. Further, that the Order directed the Land Registrar to cancel the title in the name of Kenneth Mwangi to the Applicant's name. He explains that the Land Registrar has no official capacity to issue titles and hence the need to enjoin the Director of Land Administration. Further, although the Applicant presented the said Order to the Land Registrar for execution, it was unenforceable as it is directed to the Land Registrar and yet there is need to issue the said Order to the Director of Land Administration. The Applicant contends that the Order should be treated as a vesting order and new title should not attract stamp duty since the Respondent had fraudulently registered the said title in his name.

The application is further supported by the affidavit of Applicant PHILIP NGETHE.

The Respondents though duly served failed to file any response in opposition to the said application.

Analysis and Determination

Upon consideration of the instant application including the supporting affidavit, the only issue for determination is whether the Applicant is entitled to the orders sought therein. The Applicant has sought to enjoin the Direction of Land Administration in these proceedings; issue an order directing the Land Registrar/ Director of Land Administration on the manner to enforce the order granted on 3rd April, 2019 as well as issuance of a new title forthwith.

I note this Court had granted an order dated the 3rd April, 2019 directing the 2nd Respondent's Land Registrar, to revoke the title to LR No. 25699 also known as Plot No. 316R in the name of the 1st Respondent and register the Applicant as its owner. Further, on 18th September, 2019, this Court enjoined the 3rd Respondent in these proceedings and directed him to register the Applicant as the owner of LR No. 25699 also known as Plot No. 316R. I further note that vide a letter dated the 14th December, 2020 annexed to the instant application, the Senior Assistant Chief Land Registrar wrote to the Deputy Registrar of this Court intimating their inability to implement the Order issued on 18th September, 2020 as under the Registration of Titles Act (now repealed), the Title was also the Land Register. He further explained that as per the title No. 25699 IR 6004, a Grant was issued in favour of Kenneth Mwangi and cancellation of the same would mean the Applicant commences acquiring a new lease which process is done by the Director of Land Administration. He sought for direction whether the Order issued could be treated as a Vesting Order and if it shall attract stamp duty. It is not disputed that the Applicant was declared the owner of the suit land vide the High Court Civil Case No. 27 of 2010.

Based on my analysis above and noting that the Application is not opposed, I find that the prayers the Applicant seeks are simply to implement an Order of the Court. Further, the failure by the Land Registrar to implement the previous Order issued on 18th September, 2020 is administrative as the same falls within the mandate of the Director of Land Administration. On the payment of stamp duty, this is an issue of revenue and it is the mandate of the Land Registry to determine whether the same should be paid or not. I will hence not make any order to that effect.

It is against the foregoing that I find the Chamber Summons application dated the 11th February, 2021 merited and will allow it. I will proceed to make the following final orders:

i. The Director of Land Administration be and is hereby enjoined in this suit.

f) The Director of Land Administration be and is hereby directed to enforce the order of the Court granted on 3rd April, 2019 as a Vesting Order.

g) The Director of Land Administration be and is hereby directed to issue a new title in respect to LR No. 25699 also known as Plot No. 316R to PHILIP NGETHE

h) Costs of this application will be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28TH DAY OF APRIL, 2021

CHRISTINE OCHIENG

JUDGE