Mwangi & another v Kibowen (Environment & Land Case 299 of 2012) [2023] KEELC 483 (KLR) (2 February 2023) (Ruling)

Neutral citation: [2023] KEELC 483 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT & LAND CASE 299 OF 2012

EO OBAGA, J

FEBRUARY 2, 2023

BETWEEN

MICHAEL K MWANGI ..... 1ST PLAINTIFF

ELIUD NJUGUNA MWANGI ..... 2ND PLAINTIFF

AND

JOHN KIBIWOT KIBOWEN ..... DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated July 7, 2022 in which the Defendant/Applicant seeks the following orders: -

    1. That this Honourable court be pleased to order the Plaintiffs to surrender the original title deed in respect of Karuna/Sosiani Block 2 (Progressive/326) to give effect to the judgment of the court issued on the.

    2. That this Honorable court be pleased to order the Defendant to surrender the Original title deed in respect of Karuna/Sosiani Block 2 (Progressive/326) facilitate the execution of the judgment of the court issued on the 15th day of October 2014 and the orders of this court made subsequent thereto.

    3. That in default by the defendant to comply with prayer 2 above, the Land Registrar Uasin Gishu county be authorized to cause ethe registration of the mutation and the transfer of the 5.5 acres in favour of the Plaintiff. The failure to surrender the title in respect of Karuna/Sosiani Block 2 (Progressive/326) notwithstanding.

    4. That the cost of this application be borne by the Plaintiff in any event.

2. I have gone through the proceedings in the file and notice that judgment was delivered in this matter on October 15, 2014 wherein it was decreed that the Applicant gets 5.5 acres to be excised out of

Karuna/Sosiani Block 2 (progressive/289). However due to subsequent subdivisions, the said excision is expected to come out of Karuna/Sosiani Block 2 (Progressive/326).

3. The Applicant contends that the transfer forms were duly executed by the Deputy Registrar when the Plaintiffs/Respondents declined to do so. The Applicant further states that the Land Registry cannot implement the decree as the Respondents' have refused to surrender the Original title for purposes of execution of the Judgement hence this application.

4. The Applicant's application is opposed by the Respondents through replying affidavit filed in court on October 19, 2022. Whereas the Respondents do not dispute the facts as stated by the Applicant, they contend that the survey which was carried out with a view to excising the 5.5 acres due to the Applicant was not properly done as the said survey is likely to give the Applicant 6.58 acres instead of 5.5 acres to which he is entitled.

5. The Respondents state that they filed an application seeking to address this issue but the application was dismissed and that they have since preferred an appeal against the said ruling and that if the present application was to be allowed, it will render their appeal nugatory.

6. I have carefully considered the Applicant's application as well as the opposition thereto. I have also considered the submission by the parties. I must say from the beginning that this an unfortunate situation where judgment which was delivered 8 years ago has not been implemented due to the hard stances taken by the parties herein. Surveyors have gone to the ground in company of parties involved but the Respondents seem not to agree.

7. Litigation must come to an end by the decree which is not being contested nor being implemented. The appeal before the Court of Appeal will not resolve this matter as the matter may ultimately go back to the ground. Whatever the outcome, the grant of this application will not render the appeal nugatory.

8. I notice that there is a typing error on the prayers sought by the applicant. Instead of the Applicant indicating the Plaintiff, he has indicated the Defendant. It is not the Defendant who is to surrender title. It is the Plaintiff. Save for that typing error which is also appreciated by the Respondents as they did not take any issue on the same, I allow the application dated July 7, 2022 in terms of prayers 2, 3 and 4 with the direction that in the order to be extracted, the word Defendant appearing in prayer 2 and 3 in line one be replaced with the word Plaintiff. The word Plaintiff in line three in prayer 3 be replaced with the word Defendant.

9 It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 2ND DAY OF FEBRUARY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Tororei for Plaintiff.

Mr. Seda for Defendant.

Court Assistant –Laban