



**Chesongoi v Anzigale (Environment & Land Case 146 of 2013)
[2023] KEELC 16172 (KLR) (6 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16172 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 146 OF 2013
FO NYAGAKA, J
MARCH 6, 2023**

BETWEEN

SAMMY KIBET CHESONGOI PLAINTIFF

AND

**JACOB AGENGO ANZIGALE ALIAS MANASSE AGENGO
ANZIGALE DEFENDANT**

RULING

1. I do not want to take long or hesitate to state that the instant application herein is for allowing. But I must point out at the outset that all situations that make learned counsel receive instructions which they accept to act on obligate them to owe a duty to both court and their clients: to court by being candid, professional, efficient, full of respect and decorum, and to the clients honest, faithful to their calling, firm and objective in their advice to the client, free from political and financial and other influence including emotional feelings, efficient in their work and forthright in their service, and demonstrate respect for the rule of law and due process and work towards enhancing rather than shrinking or prejudicing it, and lastly be of and demonstrate competence in his/her service.
2. Those are but a few duties owed by learned counsel. Learned counsel are neither robots nor puppets of clients. Under section 1B of the *Civil Procedure Act*, they owe a duty to court and justice itself to do the right thing and also advise even at the risk of losing the brief. I have stated so because in this matter the court was called upon to write this ruling just because rulings have to be delivered. That is not the reason why parties come to court. It was therefore expected of learned counsel herein to rise to the occasion and advise her client that it was not worthy opposing the instant application.

Background

3. By a plaint dated October 28, 2013 and filed on October 29, 2013, the plaintiff brought this suit against the defendant seeking an order of specific performance to the effect that the defendant transfers



- LR. No. 5335/37 to him and a mandatory injunction compelling the defendant to deliver completion documents to the plaintiff and execute all documents necessary and do such things as necessary to effect the transfer of the said parcel to the plaintiff, and costs of the suit. The defendant did not enter appearance of file defence and the suit proceeded by way of formal proof. Judgement was delivered on 21/11/2017 in favour of the plaintiff as prayed. Costs were taxed and a decree issued. The defendant instructed counsel to represent him, and on September 11, 2018 he filed a notice of appointment of advocates and applied, by way of a notice of motion dated September 3, 2018 and filed the same date as the notice of appointment. The application was canvassed by way of written submissions and it was dismissed with costs on November 15, 2018.
4. After that the decree holder applied for notice to show case why execution should not issue. It appears soon after that the parties entered into some discussion over how the matter should proceed, post judgment. They entered into a consent dated January 18, 2019 and filed on January 24, 2019. By it the defendant agreed to execute and deliver all necessary documents to transfer the land and effect the transfer of LR. No. 5335/37 in favour of the plaintiff. They also agreed on payment of the costs due taxed at Kshs. 59,450/= in instalments of Kshs. 10,000/= per month with effect from February 28, 2019 till payment in full. It appears that the part of execution of the documents of transfer was not done. Now the plaintiff has moved this court for the application before me.
 5. The application was brought under the provisions of order 22 rule 28(5) and order 51 of the Civil Procedure Rules and sections 3, 3A and 63(e) of the Civil Procedure Act and what the applicant called “all enabling provisions of the law.” In it he sought the following orders:-
 - a. That in execution of the decree of the hon. court dated November 21, 2017 and issued on April 13, 2018 the defendant be compelled to sign and deliver all and necessary transfer documents regarding LR. No. 5335/35(sic) to the plaintiff’s/ applicant’s name and in default the Deputy Registrar of the court to sign on his behalf.
 - b. Costs of the application be provided for.
 6. The application was based on five grounds being that decree of this court dated November 21, 2017 by which the defendant was compelled to sign and deliver all and necessary transfer documents regarding LR. No. 5335/37 to the plaintiff’s/ applicant’s name and in default the Deputy Registrar of the court to sign on his behalf issued on April 13, 2018; a consent dated January 18, 2019 had been filed on January 24, 2019 by which the defendant undertook to sign all documents within a month and he had not done so to date; the respondent had adamantly disobeyed the court; that in the circumstances he ought to be compelled to sign them or the Deputy Registrar does it on his behalf; and the application was made in good faith.
 7. The application was supported by the affidavit of the plaintiff sworn on January 24, 2023. He reiterated the content of the grounds but annexed to the affidavit and marked SKC 1 a copy of the consent referred to herein above. He then added that the defendant had availed copies of the Kenya Revenue Authority (KRA) PIN, passport size photographs and National Identity Card to the applicant’s Advocates but had refused to sign the transfer forms.
 8. Turning to the relevance of my introductory paragraph above, when this application came up for hearing, counsel for the applicant was not in attendance. But counsel for the defendant was but had not filed any documents in opposition to the application. But she wanted more time, not to file documents in opposition, but submissions on the application. Asked by the court whether her client opposed the application and if so, why yet there was a judgment and decree of the court to that effect, she informed the court that her instructions were to get a ruling on the application. asked further if the judgment of the court was ever appealed from, she requested for the file to be placed aside for her to confirm



- from her file. It was done and she indeed confirmed there was none. She insisted on the court giving a decision on the application hence this ruling.
9. From that history and puzzling instructions to counsel and her insistence on proceeding on the trajectory of urging a baseless opposition to the application it is clear that if this is the kind of legal practice to be entertained, then law schools, conscience, understanding and morality have a long way to go in our jurisdiction. It is ethical and professional for learned counsel to take charge of the brief they receive and lead it the way it should, in accordance with their professional training and expertise and not vice versa. Imagine having never been to a medical training (or even so) going to the doctor for treatment and you take charge of his/her clinic, directing them what to examine and which medication to prescribe and you actually take it walking home happily! Do patients guide doctors or non-professionals direct engineers on what to do in their professional service? Why do some lawyers permit themselves to be used by non-professionals in their field? Be that as it may, I now determine the application.
 10. The applicant before me prays for an order of enforcement of a lawful and valid decree of this court given on November 21, 2017 and issued on 13/04/2018. By the consent of the parties, the Respondent negotiated for time to deliver the necessary documents for purposes of and sign the transfer documents in relation to the suit land as per the decree. By the consent he was to do so within a month from January 18, 2019 but specifically from January 24, 2019 when the consent was filed and adopted. To date he has not done so. All he has done is to deliver to the applicant's Advocates a copy of his KRA PIN, passport size photographs and National Identity Card but refuse to sign the transfer forms from then: the time is not known.
 11. And, without a wink, he comes to this court to ask, by way of a verbal opposition to the application, for it to make a ruling that he does what the court ordered him to do and he even consented to over three years ago. Clearly, I find the opposition and request is an abuse of the court process and a design to buy time. For these reasons, I find that the application is wholly meritorious and the opposition thereto not only vexatious and frivolous but an abuse of the process of court. But it is baffling that the Respondent could deliver all documents in favour of the transaction and not sign the transfer. It just does not make sense. For this reason, and in the interest of both justice and expedient conclusion of this matter, the application is allowed in entirety with costs to the applicant but on the following condition: that the respondent personally attends this court on March 13, 2023 at 9.15 am with his learned counsel and with his original National Identity Card for purposes of proper identification, to explain why he set out to obey the orders of the court but stopped halfway. Thereafter, the court shall make further directions, particularly as to whether or not the Deputy Registrar of this court shall be directed to forthwith sign all the transfer documents in relation to land parcel LR. No. 5335/37 in favour of the Plaintiff.
 12. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 6TH DAY OF MARCH, 2023

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC KITALE

