



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT EMBU

E.L.C.A. CASE NO. 6 OF 2018

JOHN KIRORIA UVORO.....1ST APPELLANT

JUDITH NGINYA OVORO.....2ND APPELLANT

VERSUS

ROSEMARY MUCOGO MBUI.....RESPONDENT

RULING

1. The application before me for determination is a Notice of Motion dated 6.3.2020 and filed on 10.11.2020. It is expressed to be brought under Sections 3 and 3A of the Civil Procedure Act and all other enabling provisions of Law. The parties are two, Rosemary Mucogo Mbui, as the applicant, and John Kiroria Uvoro, as the respondent. In the appeal, John Kiroria Uvoro was the 1st appellant, the second being his wife, while Rose Mary Mucoco was the respondent.

The application has five 5 prayers as follows:

- 1) *That the Land Registrar Mbeere do dispense with production of the original title deed in respect of land parcel No. EMBU/GANGARA/155 and all transferor registration documents during implementation of the decree issued by resident Magistrate in Siakago Civil Case No. 3 of 2015 on 2nd November 2017.*
- 2) *That the Deputy Registrar of this Honourable court do execute all the relevant documents on behalf of the transferor/respondent herein to facilitate execution of the decree issued by Resident Magistrate in Siakago Cviil Case No. 13 of 2015 on 2.11.2017 and in particular in relation to the application to Land Control Board for consent for subdivision and transfer of EMBU/GANGARA/155 to the names of the applicant and transfer of land forms in respect of that land parcel.*
- 3) *That the Land Control Board, Siakago do dispense with the attendance of JOHN KIRORIA UVORO during the Land Control Board meetings for both subdivision and transfer.*
- 4) *That the OCS Siakago police station do provide security to the applicant during sub division of Land parcel No. EMBU/GANGARA/155.*
- 5) *That cost of the application be provided for.*

2. The application is anchored on the grounds, inter alia, that the lower court at Siakago issued a decree in Siakago Civil case No. 13 of 2015 on 2.22.2017 in favour of the applicant, which was for lifting a caution placed on the land register by the 2nd defendant in the lower court matter. The lifting of the caution was meant to enable the applicant herein to get three (3) acres out of land parcel No. EMBU/GANGARA/155. The respondent herein is the owner of the land and the 2nd defendant in the lower court who should have been named as second respondent herein, was his wife. The decree issued has not been implemented and this application is meant to facilitate implementation. It is clear that the respondent had appealed against the lower court matter but the appeal was dismissed.

3. The application came with a supporting affidavit which, in substance and tenor, is an emphasis and elaboration of the grounds advanced.

4. The respondent responded via a replying affidavit filed on 18.1.2021. He deposed, inter alia, that he is the registered owner of the land; that the decree issued by the lower court should not be implemented as the applicant is yet to finish paying the purchase price of the portion of land she was buying; that the same decree should be set aside as there is an appeal pending at the court of Appeal at Nyeri; and that the application lacks merit and is an abuse of the court process. Another replying affidavit dated 23.2.2021 was filed by the respondent. It is not

clear how this came to happen. But its clear that the general thrust of the second response is like that of the first.

5. The application was canvassed by way of written submissions. The applicant's submissions were filed on 26.2.2021. In terms of content, the submissions are essentially a summation of the substance of the application itself and the response made by the respondent. But the submissions also capture some history and antecedents of the case. More crucially, the submissions capture the applicable Law as follows:

Order 42 Rule 6 (1) of Civil Procedure Rules, 2010:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from many order, but the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may appeal apply to the appellate court to have such order set aside”.

6. The respondent's submissions were filed on 26.2.2021. He reiterated what he stated in his response to the application. More particularly, he submitted that the applicant has not yet fully paid for the portion she claims to have purchased. He also emphasized that he has a pending appeal at Nyeri. According to the respondent, he will suffer injustice if the application is allowed. The court was asked to dismiss it.

7. I have considered the application, the respondent's response, and the rival submissions. I have had a look into the court file too. It appears clear to me that the mater in the lower court concerned removal of a caution placed on the register of the disputed land by the respondent's wife. The lower court allowed the removal.

8. The respondents were dissatisfied and they appealed to this court. In a judgment delivered on 28.11.2019, their appeal was dismissed. It is clear that the respondent thereafter made an application to stay the orders arising from that judgment. Their application was dated 23.1.2020 and was filed on the same date. But in a ruling delivered on 9.3.2020, that application was also dismissed.

9. As things stand, there is no order of stay in favour of the respondent. The applicant is therefore within her rights to execute. The application herein is meant to make the intended execution more effective. The law is as stated by the applicant. The respondent can only stop implementation of the decree referred to if he has an order of stay. He does not have one. He cannot therefore stand in the way of implementation of the decree. The application herein is not even about whether or not to execute. It is about effective execution. Given that the respondent has no order of stay, her alleged pending appeal at Nyeri cannot be said to operate as a stay.

10. It seems to me clear that the respondent is not ready to play the role required of him to ensure successful implementation of the decree. That is why the application under consideration was filed. In my view, the application has merits. The applicant should be allowed to enjoy the fruits of her judgment and I hereby allow the application. Costs in the cause.

A.K. KANIARU

JUDGE.

Ruling on the application dated 6.3.2020 read and delivered in open court this 26th day of May 2021

In the presence of:-

Appellant – present

Respondent present

Court assistant – Leadys

Interpretation – English/Kiswahili

Muthoni for applicant

Respondent in person

Right of Appeal 30 days.

A.K. KANIARU

JUDGE