



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC NO. 2288 OF 2007**

**FORTUNAS CHARLES KAMAU.....PLAINTIFF**

**=VERSUS=**

**PERIS NYIHA KANGETHE**

**JANE WANJIKU KANGETHE**

**NJERI KANGETHE &**

**MANASES KIHU KANGETHE**

**(All sued as administrators of the**

**estate of the late SERAH NJERI**

**KANGETHE) .....DEFENDANTS**

**RULING**

On 21<sup>st</sup> December, 2012 judgment was entered herein for the plaintiff against the defendants on the following terms;

1. That the plaintiff has acquired title and has become the proprietor of L.R No. Dagoretti /Kangemi/711.
2. That the plaintiff should be registered as the proprietor of L.R No. Dagoretti /Kangemi/711 in place of the late Serah Njeri Kangethe.

The said judgment has not been stayed, varied or set aside. The defendants' appeal to the Court of Appeal against the judgment was dismissed on 3<sup>rd</sup> November, 2017. On 25<sup>th</sup> April, 2018, the court made the following orders on application by the plaintiff;

1. That the Land Registrar, Nairobi be and is hereby directed to register FORTUNAS CHARLES KAMAU, the plaintiff/decreed-holder as the proprietor of L.R No. Dagoretti /Kangemi/711 in terms of the decree of this court dated 21<sup>st</sup> December, 2012 issued on 4<sup>th</sup> November, 2013.
2. That the costs of the application be met by the respondent.

The plaintiff died on 10<sup>th</sup> July, 2018 and grant of letters of administration in respect of his estate was issued to Anthony Mwangi Kamau, Sheila Waturi Kamau and Jocylene Njeri Kamau. The said grant was confirmed on 17<sup>th</sup> February, 2020. What is now before me is a Notice of Motion application dated 17<sup>th</sup> July, 2020 brought by the administrators of the estate of the deceased seeking the following orders;

1. An order vesting/transferring L.R No. Dagoretti /Kangemi/711(hereinafter referred to as "the suit property") to Anthony Mwangi Kamau and Sheila Waturi Kamau as legal representatives and beneficiaries of the estate of FORTUNAS CHARLES KAMAU, deceased (hereinafter referred to as "the deceased").
2. That the Deputy Registrar does execute the transfer documents for the purposes of assessment and payment of Stamp Duty.
3. That the Land Registrar does issue a certificate of lease in respect of the suit property to the beneficiaries of the decree holder.

The application that was supported by the affidavit of one of the administrators of the deceased's estate, Jocylene Njeri Kamau sworn on 17<sup>th</sup> July, 2020 was brought on the grounds that the deceased registered both the decree of the court issued on 4<sup>th</sup> November, 2013 and the order made on 25<sup>th</sup> April, 2018 against the title of the suit property but the Land Registrar did not act on the same by transferring the suit property to the deceased. The applicants averred that the deceased died on 10<sup>th</sup> July, 2018 before the suit property was transferred to his name in accordance with the said decree and order of the court. The applicants have averred that the Land Registrar has declined to transfer the suit property to the applicants unless a vesting order is issued by the court vesting the suit property upon the applicants. The application was served upon the defendants but they did not respond to the same.

I have considered the application together with the affidavit filed in support thereof. By a judgment of this court made on 21<sup>st</sup> December, 2012, the court ordered that the suit property be registered in the name of the deceased in place of Serah Njeri Kangethe. On 25<sup>th</sup> April, 2018, the court once again ordered that the Land Registrar should register the deceased as the owner of the suit property in terms of the said decree. In light of the clear terms of the said decree and order, I wonder what other order, the Land Registrar would still require before effecting the transfer of the suit property to the deceased or his legal representatives. I wish to make it clear that there is no magic in what is referred to as "a Vesting Order" that the Land Registrar has called for. A vesting order is simply an order conveying a property that cannot be conveyed by the registered owner to a third party. There is no difference between a vesting order and the orders that have already been given by this court. There is no justification whatsoever for the Land Registrar's failure to register the suit property in the name of the deceased. It is not necessary for this court to issue any other order in the matter.

I have noted that the applicants have now sought an order that the suit property be registered in the names of two of the administrators of the estate of the deceased. I do not think that it would be proper for this court to be involved in the administration of the estate of the deceased. The judgment of the court was in favour of the deceased and the order of the court was that the suit property be registered in the name of the deceased. The duty of this court is to ensure that the suit property is registered in the name of the deceased or in the names of the administrators of his estate. How the said administrators of the deceased are going to distribute the suit property is beyond the powers of this court.

Due to what I have stated above, the present application was unnecessary. What the applicants should have done was to bring an application for contempt of court against the Land Registrar for disobeying clear orders of the court that have not been stayed or set aside. It is not the business of the Land Registrar to call for more orders from the court. This court does not make orders which are unenforceable. The duty of the Land Registrar is to act in accordance with the orders of the court unless the order is unclear and the Land Registrar does not know how to proceed in which case he has to move the court for clarification. I wish however to bring this old dispute to a close. It is for that reason alone that I will make the following orders;

1. The Land Registrar, Nairobi shall register L.R No. Dagoretti /Kangemi/711(hereinafter referred to as "the suit property") in the names of Anthony Mwangi Kamau and Sheila Waturi Kamau as Legal Representatives of the estate of FORTUNAS CHARLES KAMAU.
2. The Deputy Registrar of this court shall execute the instrument of transfer and any other documents necessary for the transfer of L.R No. Dagoretti /Kangemi/711 to Anthony Mwangi Kamau and Sheila Waturi Kamau as Legal Representatives of the estate of FORTUNAS CHARLES KAMAU.
3. That upon registration of Anthony Mwangi Kamau and Sheila Waturi Kamau the Legal Representatives of the estate of FORTUNAS CHARLES KAMAU as the proprietors of the suit property, the Land Registrar, Nairobi shall issue them with a Certificate of Title or Title Deed as the case may be.

**DELIVERED AND DATED AT NAIROBI THIS 2ND DAY OF NOVEMBER 2021**

**S. OKONG'O**

**JUDGE**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:**

Mr. Kairaria for the Plaintiff

N/A for the Defendants

Ms. C. Nyokabi - Court Assistant