



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 68 OF 2010

JANE MWARANIA & 3 OTHERS.....PLAINTIFFS

VERSUS

FRANCIS MURITHI M'IKIUGU.....DEFENDANTS

RULING

1. Before me is a notice of motion dated 04/03/2019 brought pursuant to Section 1A, 1B, & 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules. The applicant seeks the following orders;

i. Spent

ii. Spent

iii. That this Honorable court be pleased to authorize the Deputy Registrar to execute the necessary documents to effect sub-division and transfer of the resultant sub-division of land parcel No. ABOTHUGUCHI/KITHIRUNE/91 to the plaintiffs and the defendant.

iv. That this Honorable court be pleased to dispense with the production of the original title deed in respect of Land parcel No. ABOTHUGUCHI/KITHIRUNE/91 during the implementation of the judgment delivered herein on 1st August 2018.

v. That the cost of this application be provided for.

2. The application is based on the grounds on the face of it and on the supporting affidavit dated 4/03/2019 of **Jane Mwarania** who avers that the court vide a judgment delivered on 1st August 2018 declared that the suit land parcel No. ABOTHUGUCHI/KITHIRUNE/91 was trust land held by the defendant for himself and the plaintiffs.

3. That this court ordered the defendant to execute all requisite documents to facilitate transfer of the said land and in default the deputy registrar to do so. However the defendant has blatantly vowed to not sub-divide and transfer the resultant subdivision parcels of land. That he has also not preferred an appeal and if the orders sought are not granted, they will be denied a chance to enjoy the fruits of their judgment.

4. The plaintiffs submitted that the filing of an appeal is not an automatic stay of execution and the only circumstances that can hinder the enforcement of the court's decree is a stay of execution orders. No such orders exist, hence the orders ought to be granted.

5. The application is opposed by the respondent vide a replying affidavit dated 03/06/2019. He avers that being dissatisfied with the judgment, he issued a notice of appeal on 10/09/2018 and served the same upon the plaintiff's counsel on record, he also applied for certified copies of the proceedings and judgment. He believes he has an appeal with overwhelming chances of success and if this court's judgment is effected, then it would render his appeal nugatory and the plaintiffs will tamper with the land to the detriment of his intended appeal. That the plaintiffs application is unmerited and an abuse of the noble judicial process.

6. The defendant submitted that he has already lodged a notice of appeal and is only waiting for the issuance of the proceedings and judgment which he has no control over.

7. I have considered all the arguments raised herein. This Court already rendered its judgment and there are no orders of stay issued by this court or the appellate court. Prayer 2 in the application was allowed by consent way back on 10.7.2019 (*leave for a new advocate to come on record*). In regard to prayer no. 3 (*for the Deputy Registrar to execute the relevant transfer forms*), this order is already incorporated in the judgment (see paragraph (b) of the final orders. Therefore, that issue cannot be a subject of contests herein. For prayer no. 4, it is apparent that the respondent has failed to comply with the court's judgment. I do opine that a party must be allowed to enjoy the fruits of his judgment.

8. All in all, I find that plaintiff's application dated 4.03.2019 is merited. The same is allowed with costs to the applicants.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19TH DAY OF MAY, 2021 IN PRESENCE OF:

C/A: Kananu

Mwanzia holding brief for J. Mwiti for applicant

HON. LUCY. N. MBUGUA

ELC JUDGE