



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**

**CIVIL SUIT NO. 123 OF 2009**

**KENCENT HOLDINGS LIMITED.....1<sup>ST</sup> PLAINTIFF**

**KENYA NATIONAL ASSURANCE (2001) LIMITED.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MATI CHARO MATSERE & 330 OTHERS.....DEFENDANTS**

**RULING**

*(Application seeking orders to have Deputy Registrar execute some documents which the 1<sup>st</sup> plaintiff has failed to execute and to have a caveat registered on the suit land lifted; application allowed)*

1. The application before me is that dated 4 November 2020 filed by the 2<sup>nd</sup> plaintiff. It seeks the following orders :-

*(i) That this Honourable Court be pleased to issue summons for attendance of the directors of the 1<sup>st</sup> plaintiff company to appear personally in court and to show cause why the Court should not compel them to execute the discharge of charge in furtherance to the orders issued on 31 October 2019 by the Honourable Justice C. Yano J or make any appropriate punitive orders as a result of the non-compliance.*

*(ii) That in the alternative/or in default to prayer (i) above, the 1<sup>st</sup> plaintiff/respondent herein, M/s Kencent Holdings Limited be ordered to immediately execute the Discharge of Charge for the Charge registered in favour of Equity Bank Limited registered on Plot L.R No. 397/MN (Originally Nos. 181 and 187) C.R No. 1940.*

*(iii) That in the alternative/or in default of Prayers 2 above, the Deputy Registrar Mombasa High Court Environment and Land Division be authorised to sign all the relevant Discharge of Charge documents for Plot No. L.R No. 397/MN (Originally Nos. 181 and 187) C.R No. 1940 in relation to execution of this Honourable Court's order issued on 24 May 2020.*

*(iv) That the Honourable Court be pleased to order the Land Registrar to immediately remove the caveat placed as entry No. 19 on the title for Plot L.R No. 397/MN (Originally Nos. 181 and 187) C.R No. 1940 which was placed against the title on the 23<sup>rd</sup> December 2011 by the Land Registrar.*

*(v) That costs of this application be in the cause.*

2. The application is based on various grounds and is supported by the affidavit of Tabitha Mwaniki, the Acting Chief Executive Officer and Secretary of the Board of the applicant.

3. By way of background, the applicant was owner of the land parcel L.R No. 397/MN (Originally No. 181 and 187) CR No. 1940 (the suit land). On 10 November 2005, the applicant entered into a sale agreement selling the suit land to the 1<sup>st</sup> plaintiff for the sum of Kshs. 43,945,000/=. The 1<sup>st</sup> plaintiff made a deposit of 20% of the purchase price with the balance sought to be financed from Equity Bank Limited. It was the agreement of the parties that this balance would be paid upon registration of the transfer and handover of vacant possession. The registration of the transfer was duly done and the bank registered a charge to protect its interest, but the balance of the purchase price appears not to have been disbursed by the bank, for reason that vacant possession had not been given. Vacant possession had not been given because the land was occupied by the 1<sup>st</sup> – 331<sup>st</sup> defendants. The applicant and the 1<sup>st</sup> plaintiff thus filed this suit seeking orders for the eviction of the 1<sup>st</sup> – 331<sup>st</sup> defendants. The case was heard by Ojwang' J (as he then was) who entered judgment for the plaintiffs. The plaintiffs proceeded to make attempts to execute the judgment but it proved impossible.

4. It does appear that subsequently parties entered into negotiations to have the land sold to the 1<sup>st</sup> – 331<sup>st</sup> defendants, and an application dated 25 October 2018 was filed seeking orders inter alia, for the Government to enumerate the persons in occupation of the suit land and for the County Physical Planner to survey the parcels of land and draw a subdivision and settlement plan. The 1<sup>st</sup> – 330<sup>th</sup> defendant would then buy their occupied portions. It was argued within that application what remedy the 1<sup>st</sup> plaintiff (who was the purchaser) ought to get and the Judge (Omolo J) ordered that the proceeds of the purchase be shared in the ratio of 20:80 between the 1<sup>st</sup> plaintiff and the applicant in her ruling which was delivered by Yano J on 31 October 2019. On 24 February 2020, the applicant sought for orders that the original title be released to her which prayer I allowed.

5. In this application, the applicant avers that discharge of charge instruments have been signed by the bank but the 1<sup>st</sup> plaintiff has declined to sign the same, hence the prayer to have the 1<sup>st</sup> plaintiff held in contempt, or for an order for the Deputy Registrar to execute the said discharges of charge.

6. It is apparent that the subdivision of the land, so that the same may be sold to the 1<sup>st</sup> – 331<sup>st</sup> defendants, cannot take place until the discharge of charge is registered. The title cannot also be affected without the Land Registrar lifting the caveat placed on the register of the suit land.

7. The 1<sup>st</sup> plaintiff has filed nothing to oppose this application. On my part, I see no need to issue an order for them to show cause, or for their committal to civil jail. It was through this application that the 1<sup>st</sup> plaintiff needed to show cause but has not. The issue regarding execution of documents by the 1<sup>st</sup> plaintiff can be sorted if this court issues an order directing the Deputy Registrar of this court to sign all documents needed to be signed by the 1<sup>st</sup> plaintiff for the discharge of charge to be effected. I therefore issue an order directing the Deputy Registrar of this court to sign all documents needed to be signed by the 1<sup>st</sup> plaintiff to discharge the charge and any such documents will be deemed to have been executed by the 1<sup>st</sup> plaintiff for all intended purposes.

8. On the lifting of the caveat, there is no objection. I make the order that the Land Registrar do lift the caveat which is registered as entry No. 19 in the register of the suit land.

9. I make no orders as to costs.

10. Orders accordingly.

**DATED AND DELIVERED THIS 11<sup>TH</sup> DAY OF MAY 2021**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**