



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. 450 OF 2017

PAUL KIINGATI GATU.....PLAINTIFF

VERSUS

SUSAN NDUTA KIMANI.....1ST DEFENDANT

LAND REGISTRAR2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

The Plaintiff filed the application dated 7/7/2020 seeking to have the 1st Defendant compelled to produce in court all the bank statements or proof of the rent collected from Nairobi Block 83/14/436 (“the Suit Property”) since its occupation and to have half of that sum paid to the Plaintiff pending execution or further orders of the court. Further, the Plaintiff sought an order for the rent collected from June 2020 onwards to be deposited in a joint account of the parties pending execution or further orders of the court. He further sought to have the 1st Defendant produce and file a list of all the tenants and their respective rent in court and that parties to agree on an agent to manage the suit property pending execution of the decree. He sought an order for the attachment and sale of the Suit Property in execution of the decree and for parties to share the proceeds equally. The Plaintiff also sought a prohibitory order to restrain the 1st Defendant from transferring or charging the Suit Property pending execution or further orders of the court and for her to deposit the original certificate of lease over the Suit Property in court.

The application was made on the grounds that the Plaintiff was the beneficial owner of the Suit Property and that the 1st Defendant had been managing, collecting and utilising the rental income from the Suit Property alone since its occupation and that she had refused to account for the rental income. The Plaintiff was apprehensive that the 1st Defendant was tampering with the Suit Property.

The Plaintiff swore the affidavit in support of the application. He averred that he had never received any rental income from the Suit Property and that he was disadvantaged because he lived in the United States of America making it very difficult for him to keep travelling to Kenya. He averred that execution should proceed forthwith because the 1st Defendant did not appeal against the judgement of this court.

The 1st Defendant filed a notice of preliminary objection claiming that the court did not have jurisdiction to deal with the instant application because it became *functus officio* when it rendered its judgement.

The Plaintiff submitted that the 1st Defendant collected monthly rent in the sum of Kshs. 280,000/= from the Suit Property half of which she should remit to him. That the court ordered that the Suit Property should be sold and the sale proceeds shared equally by the Plaintiff and 1st Defendant but on several

occasions he tried to access the Suit Property without success.

The Plaintiff relied on several decisions dealing with the production of accounts, the need for a successful party to benefit and enjoy the fruits of the judgement and the inherent jurisdiction of the court.

The 1st Defendant filed submissions in which she submitted that this court had already determined the issues and rendered its judgment and that it could not therefore examine the merits of the case afresh. She submitted that after rendering judgment the court could only entertain applications for execution of decrees or contempt proceedings but not applications of the nature of the one brought by the Plaintiff.

The issue for determination is whether the court should grant the orders sought in the application dated 7/7/2020. This court heard the suit and delivered its judgment on 14/5/2019. The court found that both the Plaintiff and the 1st Defendant made monetary contributions towards the purchase and development of the Suit Property. The court directed that the Suit Property was to be valued, sold and the proceeds shared equally between the Plaintiff and 1st Defendant. Either party was at liberty to buy out the share entitlement of the other party.

The court agrees with the 1st Defendant that it is *functus officio* and cannot direct the 1st Defendant to produce the documents or grant the orders which the Plaintiff seeks. Order 22 of the Civil Procedure Rules sets out the procedure for execution of decrees, which is what the Plaintiff ought to pursue since the case was heard and finalised. The court declines to grant the orders sought in the application dated 7/7/2020.

Delivered virtually at Nairobi this 9th day of August 2021.

K. BOR

JUDGE

In the presence of: -

Mr. Kennedy Getanda for the Plaintiff

Ms. W. Nyaboke holding brief for Mr. D. Anyoka for the 1st Defendant

Mr. V. Owuor- Court Assistant

No appearance for the other Defendants