



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

ELC NO. 77 OF 2012

BETHSHEBA BETTY ADALA.....PLAINTIFF/APPLICANT

-VERSUS-

NAKURU WORKERS HOUSING CO-OP SOCIETY LTD.....1ST DEFENDANT/RESPONDENT

DISTRICT CO-OP OFFICER NAKURU

MINISTRY OF CO-OPERATIVE DEVELOPMENT.....2ND DEFENDANT/RESPONDENT

MARTHA WAMBUI.....3RD DEFENDANT/RESPONDENT

RULING

Application

1. The applicant moved the court through Notice of Motion dated **16/9/2021**, brought under (**Section 1A, 1B, 3A and 98 of the Civil Procedure Act and Order 49 Rule 5 and 51 Rule 1 of the Civil Procedure Rules 2010**) seeking the following orders:-

1. [Spent].

2. THAT this Honourable Court be pleased to issue orders for compliance and enforcement of the consent order issued by this court on the 2nd October, 2010.

3. THAT this Honourable Court be pleased to grant a closer trial date noting the circumstances and particulars of the matter.

2. The application is supported by an affidavit dated **16/9/2021** sworn by **Bethsheba Betty Adala** in which she deposed that when the matter was mentioned on **3/3/2016**, the 1st defendant/respondent intimated to the court that they were willing to assign a separate parcel of land known as **Plot No. 430** to the plaintiff/applicant in a bid to settle the matter; that the matter was then mentioned on **14/3/2017** where the court directed the 1st defendant/respondent to execute the transfer documents in favour of the plaintiff/applicant.

3. She further deposed that despite various correspondences through the advocate to the 1st defendant/respondent, no action has been taken towards finalizing the process of transferring the land to her; that through her advocate, they received communication from the 1st defendant/respondent's advocate that they had not been in communication with their client since their secretary was murdered in **2017**.

4. She finally deposed that the only way the transfer of the suit property can be effected is by authorizing the Deputy Registrar to sign all instruments of transfer of land to her in place of the 1st defendant/respondent within the confines of the law.

Response

5. I have perused the file record and I have found no response filed on behalf of the defendants.

Submissions

6. The plaintiff/applicant filed their submissions on **6/10/2021**. I have perused the file record and I have found no submissions filed on behalf of the defendants.

Determination.

7. The issue for determination in the instant application is whether the applicant is entitled to the orders as sought in the notice of motion dated **16/9/2021**.

8. In the instant case, there was a consent entered into between the plaintiff/applicant and the 1st defendant/respondent on **20/9/2016** to the effect that the 1st defendant/respondent transfers some alternative land to the plaintiff/applicant in a bid to settle the matter.

9. In the submissions filed by the applicant in the matter the plaintiff submits that the defendants entered into a consent with the plaintiff upon proper advice from their counsel and that that consent is akin to a contract. The plaintiff cites cases including **Agrafin Management Services Limited Vs Agricultural Finance Corporation & 5 Others 2012 eKLR**, **Serah Njeri Mwobi Vs John Kimani Njoroge 2013 eKLR** and **Carol Construction Engineers Limited & Another Vs National Bank Of Kenya 2020 eKLR** and urges that the law relating to promissory estoppel precludes a contractual party from repudiating a prior assurance especially if the other party had relied on that assurance to their detriment.

10. The plaintiff quotes the decision in **Agrafin Management Services Limited Vs Agricultural Finance Corporation & 5 Others 2012 eKLR** as follows:

“A consent order is akin to a contract between the parties and the principles for setting aside a contract are well known. The Court, in my view, will exercise its jurisdiction to review, vary or set aside a consent order if it is shown that such an order has been obtained by fraud or collusion, by agreement contrary to the policy of the Court, or the consent was given without sufficient material fact, or misapprehension or ignorance of material facts or for a reason which would enable a court to set aside an agreement or by the consent of the parties themselves.”

11. Passages of similar import are aptly quoted in support of the proposal as to non-retractability of prior contractual assurance by a party in the two other cases cited.

12. I agree with all the plaintiff’s arguments regarding the doctrine of promissory estoppel. However in the present matter the proceedings went beyond a consent order between the parties and that makes it unnecessary to have the parties overly rely on the doctrine at the present instance.

13. The further progression of the matter beyond the consent order is evidence by the fact that the court on **14/3/2017** directed the 1st defendant/respondent to execute the transfer documents in favour of the plaintiff/applicant but the same was yet to be done as the information they received from the advocate of the 1st defendant/respondent was that their secretary was murdered.

14. Subsequently, this court granted **prayer 1** in the plaintiff/applicant’s notice of motion dated **22/2/2019**, which directed that the Deputy Registrar executes all transfer documents for **Plot No. 430 Block 6282/1 Kiambogo** on behalf of the 1st defendant/respondent and a title deed be issued to the plaintiff/applicant.

15. The court while delivering its ruling on **24/9/2019** made a typographical error apparent on the face of record in describing the suit property which it later reviewed on **5/6/2020**. However the fact remains that the court had earlier given an order on **24/9/2019** directing the Deputy Registrar to execute all documents and instruments of transfer of land for **Plot No. 430 Block 6282/1 Kiambogo** on behalf of the 1st defendant. It is my opinion that once a court order is issued, the same is binding between the parties affected and therefore the orders issued on **24/9/2019** still stand.

16. The application by the plaintiff/applicant dated **22/2/2019** was sufficient enough to secure the land for the applicant. However, from the records, there is no evidence to show that the documents were brought before the Deputy Registrar for execution. I think there is some further action on the part of the applicant that has not been undertaken by his advocate in terms of liaising with the Deputy Registrar’s office to provide the requisite documents and have them executed. The instant application is therefore unnecessary. This is a matter in which action by counsel on behalf of the applicant in availing the requisite documents to the Registrar for execution can enable the expeditious conclusion of the transfer without recourse to court.

17. Regarding the order seeking the issuance by this court of a closer trial date, it is prudent to have the orders already granted implemented to pave the way for consideration as to whether there would be need for a hearing thereafter. Other issues may of course arise from the pleadings for determination, but the issue of transfer of the alternative plot to the applicant now lies in her advocate’s hands.

18. In view of the foregoing it is this court’s opinion that the application dated **16/9/2021** lacks merit and the same is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 18TH DAY OF OCTOBER, 2021

MWANGI NJOROGE

JUDGE,

ELC,

NAKURU.

