



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. 337 OF 2010

BETWEEN

ROSE WAMBUI KAMAU.....1ST PLAINTIFF

JUDY WAIRIMU KAMAU.....2ND PLAINTIFF

JULIUS KARUGA MACHARIA.....3RD PLAINTIFF

AND

CECELIA MOU CHARLES –HARRIS.....DEFENDANT

RULING

1. On 22nd June 2017, Tuiyott J., allowed the Plaintiffs' suit against the Defendant for specific performance in respect of the property known as Nairobi/Block 91/399 registered in the Defendant's name. The Plaintiffs, who are also decree-holders, have now moved the court by the Notice of Motion dated 12th April 2018 seeking the following orders from this court:

1. THAT the Honourable court be pleased to order the Defendant to sign all relevant papers and give effect to the Judgment issued on 22nd June 2016 and transfer of land on land parcel Nairobi/Block 91/399.

2. THAT in default of complying with prayer 1 of the order above, the Deputy Registrar of Milimani High Court, Commercial and Admiralty Division be authorised to sign all documents and instruments of transfer of land parcel Nairobi. Block 91/399 on behalf of the Defendant and a title deed be issued to the Plaintiff or their nominees.

2. The application is supported by the affidavit of Rose Wambui Kamau sworn on 12th April 2018. It is premised on the ground that Plaintiffs obtained a judgment in their favour on 22nd June 2017. That the stay of execution pending appeal given when the judgment was read has since lapsed and subsequent review applications filed by the Defendant have been dismissed and that there is nothing standing in the way of execution of the decree. The Plaintiffs claim that the Defendant is not willing to facilitate the transfer of the suit property to the Plaintiffs in accordance with the judgment.

3. I have perused the court file and I note that Tuiyott J., dismissed the Defendant's Notice of Motion dated 4th July 2017 seeking to review the judgment by a ruling dated 1st December 2017. By a further ruling dated 1st February 2019, the learned judge dismissed the Defendant's Notice of Motion dated 24th May 2018 seeking judgment on the counterclaim and by a ruling dated 20th December 2019, the learned judge also dismissed the Defendant's application seeking to set aside the decree in the manner proposed by her.

4. I also note that there is substantial correspondence and a record of communication between the Defendant and other officers of this court on matters that are not germane to the validity of Judgment and Decree. I am therefore satisfied that there is nothing impeding the execution of the Judgment and Decree in the Plaintiffs' favour. Since the application which has been on file since 2018 is not opposed and in order to bring this matter to conclusion, I allow the application and order as follows:

(a) The Defendant be and is hereby directed to execute all relevant documents and give effect to the Judgment issued on 22nd

June 2016 and transfer Land Parcel Nairobi/Block 91/399 to the Plaintiffs and or their nominees within 30 days from the date hereof.

(b) In default of compliance with Order No. (a) above, the Deputy Registrar of High Court, Commercial and Tax Division be and is hereby authorised and directed to execute all documents and instruments of transfer of Land Parcel Nairobi/Block 91/399 on behalf of the Defendant in favour of the Plaintiffs.

(c) The Chief Land Registrar is directed to give full effect to the Judgment and Decree herein and the orders hereinabove.

(d) This Ruling and the Orders shall be served forthwith on the Defendant personally for compliance.

(e) The matter is fixed for compliance with the aforesaid orders before the Deputy Registrar on

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JUNE 2021.

D. S. MAJANJA

JUDGE

Court of Assistant: Mr M. Onyango

Mr Odoyo instructed by Kipkenda and Company Advocates for the Plaintiffs.