



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO 166 OF 2011

JOSEPH WAIHARO KURIA.....1 ST PLAINTIFF

PETER GICHUHI MWETHERA.....2ND PLAINTIFF

=VERSUS=

NAIROBI CITY COUNTY GOVERNMENT.....DEFENDANT

RULING

1. Parties to this suit compromised and settled the suit through a consent dated 20/9/2013. The consent was filed in court on 25/9/2013 and was adopted by the Deputy Registrar of the High Court on 27/9/2013. The consent provided as follows:

1) That the plaintiffs do surrender their title over Nairobi/Block 72/2272 to the defendant forthwith

2) That the plaintiffs do accept as partial settlement LR 209/1498/15 in the place of Nairobi/Block 72/2272

3) The defendant to identify another parcel of a value that compensates the plaintiffs fully.

4) The terms herein above (ii and iii) are offered on strict condition that the plaintiffs do forthwith surrender to the defendant title over Nairobi/Block 72/2272 and the Commissioner of Lands do issue requisite Grant in respect of Land Reference Number 209/1498/15.

5) That pursuant to obtaining the Grant in (iv) above and finalizing pertinent transfer over Land Reference Number 209/1498/15 and the parcel to be identified in (iii) above, the suit herein be marked as settled with no order as to costs.

6) The defendant do offer an alternative plot in event the Grant LR No 209/1498 is not obtained.

2. Subsequent attempts by some third parties to be joined in the suit and to set aside the consent orders were declined by Mutungi J in a ruling dated 6/2/2015 in which the court held that the consent order was analogous to a final judgment and that the suit had been fully compromised. The Learned Judge further held that the Council was entitled to enter into a compromise, and having done so, it was entitled to have the consent orders executed and implemented.

3. On 31/7/2018, the plaintiffs, through the firm of Waweru Gatonye & Company Advocates, brought a notice of motion dated 31/7/2018 seeking summons compelling the County Secretary of the Nairobi City County Government to attend court to show cause why the defendant had failed, ignored and/or refused to satisfy the consent order dated 27/9/2013. That application is the subject of this ruling.

4. The application was supported by the affidavit of the 1st plaintiff sworn on 31/7/2018 in which he narrated the history leading to the institution of this suit and the subsequent compromise that culminated in the consent orders dated 27/9/2013. He added that the plaintiffs had spent the preceding seven years making attempts to get compensation from the defendant but their efforts had been in vain despite the defendant having taken their land and having made budgetary provisions in its 2016 and 2017 budgets. They urged the court to issue the orders sought in the application.

5. The defendant opposed the application through a notice of preliminary objection dated 15/1/2019 in which it contended that: (i) the application offended Order 1 rule 3 and Order 8 of the Civil Procedure Rules; (ii) there had been no amendment to include the County Secretary as a party to the suit; and (iii) the due procedure in law had not been adhered to before filing the application.

6. On 25/7/2019, the Court rendered a ruling in the following terms:

a) The preliminary objection is upheld to the extent that there is need for joinder of the party against whom the consent orders herein are to be enforced.

b) Consequently, the Nairobi City County, as successor to the City Council of Nairobi, is hereby substituted as a defendant in place of the defunct City Council of Nairobi.

c) The plaintiffs shall amend the notice of motion dated 31/7/2018 to reflect Nairobi City County as the defendant; provide for what it is that the defendant has failed to do; and spell out the penal consequences for non-compliance by the defendant.

d) Directions on the amended application will be given on a date to be set by the court at the time of delivering this ruling.

7. When this matter came up on 4/12/2019 for directions relating to the Amended Notice of Motion dated 31/7/2018, both parties confirmed that they were adopting their earlier submissions. They urged the court to render a ruling on the motion.

8. I have considered the amended notice of motion dated 2/9/2019 together with the parties' rival submissions. No replying affidavit was filed against the motion. Similarly, the defendant did not file grounds of opposition. The defendant only filed a notice of preliminary objection which was disposed through the disposal orders in the ruling rendered on 25/7/2019.

9. The tenor and import of the Amended Notice of Motion dated 2/9/2019 is that the decree holder seeks an order compelling the County Secretary of the Nairobi City County Government to attend court and show cause why the defendant has failed to satisfy the decree in this suit. It is not contested that there is a valid decree and the said decree has not been satisfied. In the circumstances, I would grant prayer 1 of the amended notice of motion dated 2/9/2019 and direct the County Secretary, or the person holding the office in acting capacity, to personally attend Court on a day to be appointed at the time of delivering this ruling. The defendant shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 27TH DAY OF JANUARY 2020.

B M EBOSO

JUDGE

In the presence of:-

Mr Muchiri for the plaintiff

Mr Gatheru defendant

June Nafula - Court Clerk