



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 913 OF 1976

NGUGI MIRU.....PLAINTIFF

=VERSUS=

KIRINGU MIRU.....DEFENDANT

AND

GEORGE NGANGA KIRINGU.....APPLICANT

RULING

The plaintiff’s suit was dismissed with costs in a judgment that was delivered herein on 25th March, 1981. The plaintiff appealed against the said judgment to the Court of Appeal in Nairobi Civil Appeal No. 40 of 1982. The plaintiff’s appeal was allowed on 5th November, 1985 and the Court of Appeal awarded the plaintiff the costs of the suit before this court and the costs of the appeal. The plaintiff filed a bill of costs which was taxed in this suit on 30th November, 1990 at Kshs. 19,694/50. The plaintiff thereafter applied for execution of the decree in respect of the taxed costs.

On 17th August, 2000, a prohibitory order was issued in favour of the plaintiff and registered against the title of a property owned by the defendant known as Ndumberi/Riabai/1140 (hereinafter referred to as “the suit property”) on 12th October, 2000. Attempts to settle the terms of sale so as to sell the suit property by public auction to recover the said costs that had risen to Kshs. 43,289.50 failed due to the death of the plaintiff and the defendant and the failure by their legal representatives to apply for their substitution. The plaintiff died on 10th April, 1988 while the defendant died on 28th January, 1998. Due to the death of the parties, no further action was taken to pursue the execution process that the plaintiff had commenced. In the circumstances, the suit property which is owned by the defendant remained attached pursuant to the said prohibitory order.

What is now before me is an application by the legal representative of the defendant, George Ng’ang’a Kiring’u (applicant) brought by way of Notice of Motion dated 15th September, 2017 seeking orders that he be substituted as a defendant in place of the deceased, Kiringu Miru and the lifting of the prohibitory order aforesaid. The application is supported by the affidavit and further affidavit of the applicant sworn on 15th September, 2017 and 13th December, 2019 respectively. In the two affidavits, the applicant narrated what transpired before this court and the Court of Appeal leading to the registration of a prohibitory order against the title of the suit property. The applicant averred that when the prohibitory order was registered against the title of the suit property, the plaintiff was already deceased and that no steps had been taken to substitute him. The applicant averred that he had paid the decretal sum of Kshs.43,289/= on account of which the said prohibitory order was issued and registered against the title of the suit property. The applicant averred that the said prohibitory order had restricted dealings with the suit property and that it was in the interest of justice that the orders sought be granted so as to bring this old matter to a close.

The application was served upon the advocates who are on record for the plaintiff. When the application came up on 5th December, 2018, the said advocates informed the court that they had no objection to the prohibitory order aforesaid being lifted. The court gave the parties time to discuss the matter with a view to settling it amicably out of court which did not materialise. When the application came up on 23rd January, 2020 for hearing, the advocates on record for the plaintiff did not turn up in court although the hearing date was given in court in their presence. The applicant’s advocate relied entirely on the affidavits filed in support of the application and urged the court to allow the application as prayed.

I have considered the applicant’s application together with the affidavits filed in support thereof. I am satisfied that the application has merit. The prohibitory order complained of was registered against the title of the suit property on 12th October, 2000, more than 19 years ago and no action has been taken by the legal representatives of the deceased plaintiff to continue with the application for execution pursuant to which the order was issued. The applicant has placed evidence before the court showing that he has paid the decretal amount on account of which the suit property was attached. I am of the view that in the circumstances, the continued attachment of the suit property through the

said prohibitory order is not justified.

The applicant had sought in addition to the lifting of the prohibitory order, an order reviving the suit and substituting the deceased defendant with the applicant. I am of the view that an order for revival of the suit is not necessary since a suit does not abate after judgment like in the present case. For the substitution of the deceased defendant with the applicant, I am of the view that the order is merited in the circumstances.

In conclusion, I hereby extend the time within which the deceased defendant was to be substituted and substitute the deceased defendant with his legal representative, George Ng'ang'a Kiring'u. I also order that the prohibitory order that was registered against the title of the parcel of land known as Ndumberi/Riabai/1140 on 12th October, 2000 shall be lifted and/or removed by the Land Registrar forthwith. There shall be no order as to costs of the application.

Delivered and Dated this 27th Day of January, 2020.

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

N/A for the Plaintiff

N/A for the Defendant/Applicant

Catherine-Court Assistant