



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISCELLANEOUS APPLICATION NO.28 OF 2018

KENNEDY OTIENO NDEGE.....APPLICANT

VERSES

FAMILY BANK LIMITED.....1ST RESPONDENT

JACKSON WANJALA WANAMBUK.....2ND RESPONDENT

RULING

1. In his Notice of Motion dated **9th October 2019** the Applicant prayed for the following reliefs;

(a) That the 1st Respondent to release the original title to land parcel no. KITALE MUNICIPALITY BLOCK 13/GATUA/439 to the applicant within one month of service of the order.

(b) That in the event that the 1st respondent fails to release the original title of the land in question to the applicant, the executive officer of this court do execute the transfer documents.

2. The application is supported by the applicant's affidavit sworn on the 8th day of October, 2019 together with the attached annexures.

3. The Respondent vide the replying affidavit of one **SYLVIA WAMBANI** dated 12th February, 2020 has opposed the application. When the application came up for hearing the court ordered the same to be disposed by way of written submissions which the Applicant has complied and the court has perused the same.

4. The issues herein are clear and straightforward as can be deduced from the annexed documents. The 2nd Respondent charged the suit property to the 1st Respondent for the sum of kshs.1.5 Million. On 3rd August 2016 the 2nd Respondent sold to the Applicant the suit land for a total sum of kshs.2.6 Million. The Applicant then paid the sum of Kshs 1.6 Million to the 1st Respondent towards the payment of the loan.

5. In the said agreement the 2nd Respondent agreed to release the title to the Applicant once the loan is settled. Apparently it appears that once the loan was settled the 2nd Respondent failed to honour that part of the agreement which prompted the Applicant to file a land case No 43 of 2017 at ELC court and the 2nd Respondent was ordered to release the documents to the Applicant.

6. The 2nd Respondent who has been generally absent in this matter despite being served failed to have the documents delivered to the Applicant hence this application.

7. The 1st Respondent essentially has not denied the above facts. The only legal argument is that they cannot release the title to the Applicant since it is not a party to the contract between it and the 2nd Respondent. That they fear being sued by the said 2nd Respondent for breach of contract. It however does not deny that the loan has been paid in full.

8. The sum total of the issues herein is the failure by the 2nd Respondent to advise the 1st Respondent to release the instruments to the Applicant. There is no doubt as was found by the ELC court that it was the Applicant who has paid the loan. If there was any issue between the Applicant and the 2nd Respondent, then there was room for him to contest at the said court.

9. For now, the 1st Respondent fears are legitimate to the extent that the Applicant was not privy to the contract between it and the 2nd Respondent. However, this court is not blind to the predicament suffered by the Applicant. The beneficiary of his suffering is the 2nd Respondent whose loan has been settled through the purchase by the Applicant of the charged land.

10. In the premises, this is a classic case where the court is called to intervene. There is no prejudice to be suffered by the 1st Respondent since in effect it has already discharged the security. The 2nd Respondent has cleverly failed to walk to the bank to collect and hand over the title to the Applicant for no apparent reason.

11 . Consequently, the 1st Respondent is hereby ordered within the next 14 days to release Title No. KITALE MUNICIPALITY BLOCK 13 /GATUA/9 and any other legal instrument so as to facilitate transfer to the Applicant to the Applicant unconditionally.

12 . The Applicant shall have the cost of this application to be paid by the 2nd Respondent.

Dated, signed and delivered in open court this 8th day of April 2020.

H. K. CHEMITEI

JUDGE

8/4/2020