



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

E.L.C NO 60 OF 2015

BENEDETA CHERUIYOT MABWAI.....PLAINTIFF

VERSUS

WILLIAM RONO.....DEFENDANT

RULING

1. The application before me is a Notice of Motion dated 26th June, 2019 filed by the Plaintiff – **BENEDETA CHERUTO MABWAI** – on 27th June, 2019. It is expressed to be brought under Section 63 (e) of the Civil Procedure Act (cap 21). The Defendant – **WILLIAM RONO** – wants to execute against the Plaintiff by causing transfer to himself of a portion of Land parcel NO KERICHO/KIPSONOI/SS/513 (“parcel NO 513” hereafter) to himself. Parcel NO 513 is currently registered in the name of the Plaintiff. The basis of the Defendant’s intention is a win he secured long ago in a Land Tribunal dispute involving the same land. It was a win that was adopted by Principal Magistrate’s court at Sotik on 12th August, 2010.

2. The Plaintiff wants an order of stay so that the land is not transferred as intended. She would like the transfer stopped because this suit itself is a contestation of that win and she fears that she will suffer irreparable loss and/or damages if that happens.

3. The application has four prayers but prayer 1 is now spent, leaving prayers 2,3 and 4 for consideration at this stage. The prayers for consideration are as follows:

***Prayer 2:** That pending the hearing interpartes the honourable court may be pleased to order a stay of order dated 30/05/2019 issued by Sotik Principal Magistrate Court on 6/6/2019.*

***Prayer 3:** That the Land Registrar, Bomet, do ensure compliance of Order 1(sic) above by suspending the registration of transfer or any transaction on the Register of Land parcel number KERICHO/KIPSONOI S.S/513.*

***Prayer 4:** That any other necessary order may be given in the interest of justice.*

4. The application is anchored on grounds, inter alia, that the Defendant intends to effect the transfer; that the Land Dispute Tribunal had no jurisdiction to determine ownership of land; and that the Plaintiff is likely to suffer irreparable loss and damage. The grounds were amplified in the Plaintiff’s affidavit that came with the application.

5. The Defendant responded to the application vide a Replying Affidavit dated 23rd July, 2019. He filed that affidavit in court on 7th August, 2019. According to the Defendant, the application is based on lies. He deposed, inter alia, that the Plaintiff only intends to deny him the fruits of his judgement. He averred that everything he has done is above-board.

6. The Plaintiff felt the need to file yet another affidavit and, in that regard, filed it on 9th October, 2019. In the affidavit, she talked of the lower court at Sotik having given authority to its executive officer to sign transfer documents so that the land can be transferred to the Defendant.

7. The application was canvassed by way of written submissions. The Plaintiff’s submissions were filed on 25th October, 2019. According to the Plaintiff, the Land Disputes Tribunal that awarded land to the Defendant had no jurisdiction to do so. Her case here is therefore said to have high chances of success. She further submitted that if the intended transfer takes place, the outcome of her suit will be rendered nugatory if it will be in her favour. She also fears that if the land is transferred to the Defendant, he might sell, mortgage or lease it and he will therefore not be able to return it to him if this suit succeeds.

8. The Defendant submissions were filed on 18th November, 2019. According to the Defendant, the Plaintiff’s application should not be allowed. The Plaintiff was accused of guilty conduct and is therefore undeserving of the orders she is seeking which, in Defendant’s view, are equitable orders.

9. It appears to me that the Defendant perceives that the Plaintiff is seeking injunctive orders. And this is so because he submits about the Plaintiff not making out a prima facie case with a probability of success or not demonstrating that an award of damages would not be an adequate remedy. All these are considerations relating to grant of temporary restraining orders. The prayer under consideration is one of stay, not injunction. There are different considerations for an order of stay.

10. I have considered the application, the response made, rival submissions, and past proceedings as shown on record. I think both sides approached the application in a rather casual way. There is the Plaintiff whose prayers in the application are not meant to last beyond the hearing and determination of the application. A look at prayer 2, for instance, shows that the order sought is meant to last only “*pending the hearing interpartes...*”. A careful reading of the prayer shows that the order sought is only capable of applying when the application is pending. There is no prayer made to last until the suit is heard and determined, which, in my view, is what the Plaintiff should be looking for at this stage. Prayer 3 in the application is supposed to apply like prayer 2. Question is: Why couldn’t the Plaintiff take time to think through this application so that his prayers, if granted, can achieve what he wanted? Courts of law do not like giving vague or imprecise orders. The Plaintiff should have been more careful.

11. As things stand, even if I were minded to grant the orders, the lifespan of such orders cannot go beyond this ruling. Infact, when this application came before me *exparte* on 9th October, 2019, I granted prayer 2. That prayer became spent at that stage. It was granted pending interpartes hearing of the application. There should have been another prayer meant to last until the hearing and determination of the suit. That prayer is not there. Alternatively, that same prayer itself should have been formulated first to serve before the interpartes hearing of the application and also pending hearing and determination of the suit. It was a grievous blunder on the Plaintiff’s part to formulate his prayers so casually. Prayer 3 is meant to operate like prayer 2. And it should therefore suffer the same fate. These weaknesses are enough to warrant dismissal of the application but there is more.

12. But before I even mention what is more, I need to turn to the Defendant’s side and also point out a glaring weakness. The application brought is essentially one for an order of stay. But the Defendant’s submissions seem to confuse this with injunction. That is why, I think, he talks of a *prima facie* case not being made or damages not being shown to be an adequate remedy. With respect, such considerations do not come into play in an application for stay.

13. I have said there is more and I want to say this: The more crucial consideration is not even to be found in the weaknesses associated with both sides. A look at the record shows clearly that there was an earlier application for stay. That application was dated 18th December, 2015. The court ruled on it on 28th August, 2018. The application was dismissed. The Plaintiff was seeking to stay execution of decree that arose from the decision of the Land Disputes Tribunal. When the court dismissed that application, what that in effect meant is that the Defendant herein could proceed with execution. That earlier application was made in this suit and one would have expected that the Plaintiff would go on appeal or seek review or setting aside if he wanted to forestall or stop the consequences of dismissal. That never happened. Instead, the Plaintiff belatedly filed the application at hand which in purport, meaning, and/or import seeks to achieve what the earlier application did not achieve.

14. It would be wrong, and it is indeed not allowable, that I should sit to reconsider the granting of an order that had been denied earlier. And I say this because had the earlier application been allowed, the transfer now being challenged would not take place as it would have been part of execution prohibited by the order of stay. The corollary is that since the earlier application was dismissed and the order of stay denied, all steps of execution, including the one being challenged now, could legitimately take place. The Plaintiff squandered her chance when she failed to contest the dismissal of the earlier application. To me, this application itself is misplaced and/or mischievous.

15. The upshot, in light of the foregoing, is that the application before me is one without merits. I therefore decline to allow it and hereby dismiss it with costs.

Dated, signed and delivered at Kericho this 24th day of February, 2020.

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A. K. KANIARU

JUDGE