



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 30 OF 2017

CHARLES KABURU.....PLAINTIFF/APPLICANT

VERSUS.

MUNYUA NDATHO.....DEFENDANT/RESPONDENT

RULING

1. The plaintiff has filed the application dated 7th November 2019 seeking the following Orders;

(i) Spent.

(ii) That the Honourable Court be pleased to issue an order requiring the Ocs Kariene Police Station to provide Security to the applicant/plaintiff and the Meru County Surveyor during the subdivision of Land Parcel No. Abothuguchi/ Kariene/601 to ensure that judgement of this Honourable Court delivered on the 25th day of April 2018 is implemented.

(iii) That the honourable Court be pleased to remove the caution and inhibition placed against L.r. No. Abothuguchi/Kariene/601 by the applicant/ plaintiff to enable the implementation of this courts judgement.

(iv) That the order in prayer 2 above be served upon the Ocs Kariene Police Station for compliance.

(v) That costs of this application be provided for.

2. The application was supported by the sworn affidavit of **Charles Kaburu** who averred that the defendant has refused to cooperate with him and subdivide the land as per the judgement of the court. That when he realised the land was in danger of being disposed off, he caused a caution to be registered against the land. However, in order to implement the court's judgement, it is only just and fair to have the caution/inhibition which is registered on the land removed.

3. The defendant opposed the application through Grounds of opposition filed on 22nd November 2019 where he contends that;

(i) The decree sought to be implemented is affected by an intended appeal at the Court of Appeal.

(ii) There has been no request made and declined nor has there been any resistance to have the court decree implemented. Thus the Orders sought are only intended to harass the Defendant/Respondent.

(iii) The application is grounded on a false affidavit and therefore the orders sought cannot issue.

Analysis and Determination

4. Section 73(1) of the **Land Registration Act** provides that:-

“A caution may be withdrawn by the cautioner or removed by order of the court or subject to sub-section 2 by order of the Registrar”.

5. The Judgement of this court delivered on 25/04/2018 was clear that L.r. Abothuguchi/ Kariene/601 was to be divided into two equal shares , where one share was to be registered in the name of Charles Kaburu comprising the portion of land he is already occupying while the other

equal share was to be registered in the name of Munyua Ndatho.

6. The defendant has since filed a notice of appeal dated 4/05/2018. Besides the notice of appeal there is no indication that an appeal has since been filed. The Defendant has not also moved this court or the superior court to stay the judgement and consequential Orders made on 25/04/2018. There is therefore nothing to hinder this court from issuing the orders sought by the plaintiff/ applicant.

7. The Orders sought by the applicant do not in any way embarrass the defendant but are necessary in order to maintain peace and security during the survey and subdivision process.

8. The upshot of this Ruling is that i find merits in the plaintiffs application dated 7/11/2019. The said application is allowed but each party is to bear their own costs of the said application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 19TH FEBRUARY, 2020 IN THE PRESENCE OF:-

C/A: Kananu

Muriuki K. holding brief for Nyaga Nyamu for plaintiff/applicant

Karanja holding brief for Kariuki for defendant/respondent

Plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE