



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 234 OF 2017

FORMERLY NAKURU HCCC NO. 58 OF 2011

NDOVU ESTATES LIMITED.....PLAINTIFF

-VERSUS-

KAUSHAL KUMAR MAHENDRABHAL.....DEFENDANT

RULING

By an Application dated 2nd May, 2019 the Applicant had sought for orders to set aside a consent order recorded in court on 12th October, 2017. The Application is based on the grounds that the Plaintiff had failed to pay the agreed sum of kshs. 1,550,000 though he continued to enjoy and use the Defendant's parcel of land Cis Mara/Olololunga/13522 and that pursuant to the above the Plaintiff had frustrated the said consent order by his refusal to pay and thus the same is no longer tenable. The application was further supported by the Affidavit of the plaintiff in which pursuant to the aforesaid consent order the Plaintiff has continued to enjoy the use of the suit parcel of land despite his inability to meet the terms of the consent order to pay the sum of kshs. 1,550,000 and he has not taken any steps to comply with the said order.

The Application was opposed by the Plaintiff/Respondent who had filed a replying affidavit who averred that the parties herein had recorded a consent which marked the suit as settled with a condition that the defendants were to sign transfer documents in favour of the plaintiff in respect of the suit land. He further stated that the consent entered was subject to various conditions chief among them being how the land would be transferred.

I have considered the application and the submissions filed by the parties. The circumstances under which a consent order can be set aside or varied is now well settled.

The party seeking the consent must satisfy that there was fraud, misrepresentation or collusion or such other grounds that are contrary to the law and policy.

In the instant matter the consent between the parties was premised or was conditional precedent to the plaintiff paying the sum of kshs. 1,550,000 within 30 days of entering into the said consent.

It was expressly stated in the consent that was in record as follows: -

“That the Defendant would transfer land parcel No. Cis Mara/Olololunga/13522 upon receipt of payment of kshs. 1,550,000 the said payment was to be expressly effected through the defendant's advocate within 30 days of the consent.”

The Respondent though accepting that indeed those were the terms of the consent contends that the applicant has failed to actualize the administrative details of how the transfer was to be effected and thus he withheld the consideration of kshs. 1,550,000 thus necessitating the instant application.

Having stated above I find that since the applicant had not received the sum of kshs. 1,550,000 which was the conditional precedent to the actualization of the transfer of the land then the application dated 2/5/2019 is merited and I accordingly set aside the consent dated 20/10/17 and order that the suit herein be set down for hearing.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **5TH** day of **MARCH, 2020**

Mohammed Kullow

Judge

5/3/2020

In the presence of:-

CA:Chuma/Kimiriny

Parties and advocates absent

Mohammed Kullow

Judge

5/3/2020