



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO. 175 OF 2008**

**IN THE MATTER OF THE ESTATE OF THE LATE HARISH CHANDRA INDOCHA - (DECEASED)**

**CATHERINE MATEI CHENA.....APPLICANT**

**VERSES**

**PRADEEP HARISH HINDOCHA.....RESPONDENT**

**RULING**

1. The summons by the Applicant dated 24<sup>th</sup> June, 2019 seeks inter alia to stay the judgement and the decree of this court delivered on the 11<sup>th</sup> June, 2019. The same equally prays for the review and setting aside of the proceedings of 10<sup>th</sup> December, 2018 and that she be allowed to defend the case afresh. The application is supported by her affidavit sworn on the even date.
2. The gist of her application is that on the day she was supposed to turn up for the hearing of the case namely on 10<sup>th</sup> December, 2018 she was arrested pursuant to the order of this court after failing to deliver the original title of land parcel number **MOISBRIDGE /ZIWA BLOCK 16 CHEBARUS /324** to the court. She said that while at the cells she was unable to conduct her counsel and to know what was taking place. Thereafter she was placed in prison by the Deputy Registrar of this court.
3. The applicant has equally filed further affidavits in which she has accused her counsels on record and according to her she seemed to have fallen into a trap where she instructed strangers to represent her.
4. Her other arguments are that this court did not have the jurisdiction to order the cancellation of the titles as that was the preserve of the Environment and land court.
5. The Respondent vide his replying affidavit sworn on 19<sup>th</sup> July, 2019 has vehemently opposed the application on the grounds that the applicant is the author of her misfortune for failing to comply with the order of the court to deliver the original title deed for the land. He said that a warrant of arrest had been issued against the applicant properly and that it was appropriate for the Registrar to have handled the matter after the arrest of the applicant.
6. He stated also that the applicant was guilty of laches as the application was filed several months after the judgement had been delivered.
7. This court has perused the submissions by the counsels on record as well as the lengthy authorities which I need not reproduced.
8. Taking the view that this was a succession matter and the fact that the Constitution provides unimpeded access to justice this court is inclined to allow the application. It appears whether true or not that the applicant was arrested on the 10<sup>th</sup> December, 2018 when the matter was due for hearing. That arrest was appropriate as it was ordered by this court after the Applicant failed to deliver the original title despite being granted numerous chances during the hearing and the record is clear for all to see.
9. The Applicant the court notes seems to be a master of changing advocates including at a short notice. This court will not chase her and her children from the judgement seat. She shall be given another chance.
10. It is obvious that much may have happened from the date when the judgement was delivered. The respondent nevertheless can be compensated. Land is a fixture feature which will not move save that it can be transmitted.
11. All in all ,this court without looking at the other issues raised by the Applicant shall grant her a benefit of doubt by reopening the case as follows;

**(a) The proceedings of this court from 10<sup>th</sup> December, 2018**

including the judgment dated 11th June, 2019 are hereby set aside together with the attendant consequences.

(b) The applicant shall within 30 days from the date herein pay thrown away costs of kshs.60000 to the respondent.

(c) The applicant shall within 30 days from the date herein

deliver to this court the original title deed for land parcel N. MOISBRIDGE/ZIWA BLOCK 16 CHEBARUS/324.

(d) In default of either order (B) or (C) above the judgement of this court dated 11<sup>th</sup> June, 2019 shall revert

(e) The respondent shall have the cost of this application

Dated signed and delivered in open court at Kitale this 18th day of November 2019.

.....

H. K. CHEMITEI

JUDGE

18/11/2019

In the presence of:-

Kiarie for Respondent

No appearance for the Applicant

Court Assistant – Kirong

Ruling delivered in open court.