



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
CIVIL SUIT NO. 20 OF 2011

D E N.....PETITIONER

VERSUS

P N N.....RESPONDENT

RULING/DIRECTIONS

1. The petitioner has moved the court for directions with regard to the implementation of the judgment of the Court of Appeal delivered on 9th March 2015 in Civil Appeal No. 226 of 2012, between the petitioner herein and the respondent.

2. The salient part of the judgment for the purposes of the task now before me is to be found in orders 3 and 4 of the said judgment. The said orders state as follows:-.

'3. We direct that the Nyandarua property that is LR No. [.....] shall be transferred into the sole name of the appellant D E N.

4. We direct that the Nairobi property that is LR No. Nairobi Block [...] High View Estate Phase II house no. [...] shall be transferred to the respondent P. N. N on the following conditions.

(i) That she does within a period of one hundred and twenty (120) days from the date of the filing in Court of the current valuation reports to the properties pay to the respondent the amount forming the shortfall on the equal sharing of the aggregate value of both properties after factoring in the value of the Nyandarua property.'

3. The matter was initially placed before Muigai J. in 7th May 2015 for directions. After hearing both sides, the court allowed the respondent a one hundred and twenty (120) days stay of execution of the enforcement of the Court of Appeal judgment and orders to allow her to apply for a review of the appeal orders.

4. It would appear that the respondent did not take advantage of the 120 days window granted to her by the court, for did not seek review of the orders of the Court of Appeal. That being the case, the matter was placed before Muchelule J. on 26th February 2016 for further directions. It was directed on that date that

the respondent do file an affidavit, within fourteen (14) days, proposing a valuer, failing which David Chege Kariuki of Tuliflocks Limited was to be deemed as duly appointed to value the properties, the subject of the Court of Appeal judgment, within thirty (30) and to file a report in court. .

5. The respondent challenged the orders made on 26th February 2016, through her application dated 9th March 2016, which sought the setting aside of the said orders. The application was handled by Muchelule J. on 14th April 2016. A ruling was delivered on it on 17th June 2016 dismissing the same.

6. Following the said dismissal, the petitioner has now returned to court, stating that the order made on 26th February 2016 has been complied with, and urging that directions be given on the implementation of the Court of Appeal judgment.

7. It was specifically stated that the valuations have been done and reports filed in court, the 120 days granted to the respondent to pay to the petitioner the shortfall between the value of the Nyandarua and the Nairobi property have expired, and proposing that the Nyandarua property should be transferred to the name of the petitioner while the Nairobi property should be sold and the proceeds therefrom deposited in court to await distribution as between the petitioner and the respondent. It was mentioned that there was a caution against the title to the Nyandarua property lodged by the respondent, and it was urged that the court do order removal of the said caution.

8. I have had time to peruse the record herein. I have noted that there are copies of valuation reports in respect of the two properties. Both were prepared by Tuliflocks Limited, and are dated 23rd March 2016. They were lodged in court on 6th April 2016 through an affidavit sworn by the valuer, David Chege Kariuki, on 4th April 2016. The record also reveals that the respondent did not appoint a valuer contrary to the orders of 26th February 2016, and therefore there are not valuation reports on record from valuers appointed by her. The valuations by Tuliflocks Limited are therefore the only ones on record.

9. The valuer put the market value of the Nairobi property as at the date of valuation at Kshs. 14, 500, 000.00, while that of the Nyandarua property was assessed at Kshs. 1, 750, 000.00. Out of the Nairobi property, the petitioners' entitlement is Kshs. 7, 250, 000.00, while the respondent's entitlement in the Nyandarua property is Kshs. 875, 000.00. The amount that the respondent should pay to the petitioner as shortfall works out to Kshs. 6, 375, 000.00. That is to say that out of the Nairobi property the petitioner should get Kshs. 7, 250, 000.00, less the sum of Kshs. 875, 000.00 that is due to her from the petitioner from the Nyandarua property. The other way of putting it is that the total value of the two assets is Kshs. 16, 250, 000.00. Divided equally between them, each would get Kshs. 8, 125, 000. The shortfall payable to the petitioner should be the difference between Kshs. 8, 125, 000 and the value of the Nyandarua property, Kshs. 1, 750, 000.00, making Kshs. 6, 375, 000.0.

10. The grace period allowed by the court for settlement of the amount was within a period of 120 days from the date of the filing in court of the valuation reports. As indicated above, the valuation reports were filed in court on 4th April 2016, and it was from that date that the 120 days period started to run. The 120 days expired on or about 2nd August 2016. The sum of Kshs. 6, 375, 000.00 has not been paid to the petitioner hence the drive by him to have directions given on the matter.

11. Regarding the Nyandarua property, it was the express order of the Court of Appeal that the same be transferred to the petitioner. I agree with Mr. Okoth that no conditions were attached to the said transfer. It was mentioned that there is a caution against the title. The same ought to be removed to facilitate compliance with the Court of Appeal judgment. Regarding the Nairobi property, the duration within which the respondent should have paid the shortfall of Kshs. 6, 375, 000.00 has expired, and she has not made good. In the absence of that non-compliance, the only remedy open to the parties is the disposal of the property by sale, whereafter the proceeds of sale are to be distributed.

12. At the Court of Appeal a concern was raised about the children of the former marriage, particularly the minors residing in the properties the subject of division. The court stated that it would be prudent to bear in mind the fact that there are such minors in occupation of the assets the subject of the dispute,

noting that their welfare has to be taken into consideration even as directions are being made with respect to compliance with the judgment.

13. In the end, the orders that I shall make in the circumstances are as follows:-

a. That the Land Registrar responsible for Nyandarua County shall cause the caution against the title in LR No. [.....] to be removed forthwith and to thereafter cause the said property to be registered in the name of the petitioner, D E N;

b. That LR No. Nairobi Block [...] High View Estate Phase II House No. [...] shall be sold by private treaty, within the next 120 days of date herein, at a price of not less than Kshs. 14, 500, 000.00 and the proceeds of sale shall thereafter be deposited in court within seven (7) days of the sale for distribution as between the petitioner and the respondent;

c. That the sale ordered in (b) above shall be conducted only after the parties hereto, either jointly or severally, have secured adequate alternative accommodation or residence for the minor children; and

d. That the matter shall be mentioned after sixty (60) days to confirm compliance with (c) above.

14. It is so directed.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF SEPTEMBER, 2016.

W. MUSYOKA

JUDGE