



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 39 OF 2019

ANDREW MUKULU.....PLAINTIFF/DECREE HOLDER

VERSUS

MIRIAM IJAI

ELPHAS ARADI.....DEFENDANTS/JUDGEMENT DEBTOR

RULING

The application is dated 18th February 2020 and is brought under Sections 3A and 98 of the Civil Procedure Act Cap 21 Laws of Kenya seeking the following orders;

1. That the Executive Officer/Deputy Registrar Environment and Land Court be empowered to execute all documents of transfer in place of Miriam Ijai & Elphas Aradi for transfer of half of land parcel No. Isukha/Shirere/589 out of the estate of the late Enos Keya Kinadoso to the plaintiff/applicant's name in order to give effect to the judgment of court delivered on 23rd July, 2019.
2. That costs of this application be provided for.

It is based on the affidavit of Andrew Mukulu and on grounds that the respondents have declined to sign the application of the Land Control Board consent for sub division of the suit land in execution of the judgment delivered by this honourable court on 23rd July, 2019. That the plaintiff/decree holder wishes to enjoy the fruits of the judgment by way of execution. That execution of the decree can only be by the Executive Officer/Deputy Registrar. That there should be an end to litigation in the best interest of justice. That it is in the interest of justice that the application be allowed.

The respondent submitted orally that they have filed an appeal and that the 1st defendant is deceased and they need time to substitute. That there is no administrator of her estate at the moment.

This court has considered the application and the submissions therein. Order 24 Rule 10 of the Civil Procedure Rules states as follows:-

“24. (10) Nothing in order 3,4 and 7 apply to proceedings in execution of a decree or Order”.

Rule 3 deals with the death of a Plaintiff or Plaintiffs. Rule 4 deals with the death of a Defendant or several Defendants. It is clear that Order 24 Rule 10 removes the necessity of a legal representative in proceedings in execution of a decree or an order.

In the case of Eunice Kirunda Kinyua v Josephat Mwathi Kibiri (2018) eKLR the court held that;

“In the present case, both parties were alive and well up till the court concluded the hearing and reserved the judgment to a future date. The defendant died a few weeks before the judgment was delivered. It is my view that under Order 24 Rule 1, the suit did not abate as the cause of action continued. What remained was execution which could be effected against the estate of the deceased. This is especially so because the judgment was delivered well within the one year period prescribed by order 24 rule 2.”

In the instant case judgement was delivered on the 23rd July 2019. All the parties were alive and well during the trial and delivery of judgement. The 1st defendant lodged an appeal on the 23rd September 2019 and died three months later. I find that Order 24 Rule 10 of the Civil Procedure Rules is applicable in this matter in that there would be no requirement for substitution when it comes to execution of the decree. I find this application is merited and I grant the same with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 27TH OCTOBER 2020.

N.A. MATHEKA

JUDGE