

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT EMBU

E.L.C. CASE NO. 213 OF 2014

(FORMERLY KERUGOYA ELC CASE NO. 812 OF 2013)

EZEKIEL KAGOYA WAKAGWI.....PLAINTIFF

VERSUS

SAMUEL NGAHU MUNDUI

(Sued as legal representative of the estate of WANJOHI NGAHU).....DEFENDANT

RULING

1. By a notice of motion dated 6th November 2019 brought under **Section 98** and **Section 3A** of the **Civil Procedure Act (Cap. 21)** the Plaintiff sought a court order authorizing the Deputy Registrar/Executive Officer of the court to execute all necessary documents on behalf of the Defendant to facilitate transfer of *Title No. Nthawa/Gitiburi/1904* (the *suit property*) to the Plaintiff in execution of the decree dated 30th May 2019.
2. The said application was based upon the grounds enumerated on the face of the notice of motion and supported by the Plaintiff's supporting affidavit sworn on 6th November 2019. The gist of the application was that the order sought was necessary for the purpose of executing the judgement and decree of the court in favour of the Plaintiff dated 30th May 2019.
3. The Defendant filed a replying affidavit sworn on 27th January 2020 in opposition to the said application. The Defendant contended that he had already filed an appeal against the said decree before the Court of Appeal at Nyeri. In a bid to demonstrate the filing of the appeal, the Defendant exhibited a copy of a notice of appeal dated 27th January 2020. The Defendant further contended that he did not believe that the Plaintiff had proved his claim for adverse possession at the trial and that his appeal had high chances of success. He, therefore, asked the court to dismiss the said application.
4. When the said application was listed for hearing on 29th September 2020 the Advocates for the parties informed the court that they had already filed their respective written submissions on the application and that they intended to rely entirely upon those submissions. The record shows that the Plaintiff filed his submissions dated 1st September 2020 on or about 25th September 2020 whereas the Defendant filed his submissions dated 28th September 2020 on 28th September 2020.
5. The court has considered the said application, the Defendant's replying affidavit in opposition thereto, the parties' written submissions and the material on record. It is evident from the material on record that the Defendant's application for stay of execution was dismissed by this court on 30th July 2020. It is also apparent that the Defendant has not obtained any order for stay of execution from the Court of Appeal. Although the Defendant indicated that he had a pending application before the Court of Appeal for extension of time within which to file his notice of appeal that would not be sufficient reason to decline the Plaintiff's application. The court is of the opinion that the Plaintiff is entitled to enjoy the fruits of his judgement in the absence of an order for stay of execution either from this court or the Court of Appeal.
6. In the premises the court is satisfied that the Plaintiff's notice of motion dated 6th November 2019 is merited. Accordingly, the said application is hereby allowed with costs to the Plaintiff. It is so ordered.

RULING DATED and SIGNED in Chambers at EMBU this 15TH DAY of OCTOBER 2020 and delivered via Microsoft Teams platform in the presence of Ms. Rose Njeru for the Plaintiff and Ms. Mbugua holding brief for Mr. C.N. Kihara for the Defendant.

Y.M. ANGIMA

JUDGE

15.10.2020