



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

E.L.C JUDICIAL REVIEW CASE NO. 7 OF 2013

LUCY MUMBI NJOGU APPLICANT/PLAINTIFF

VERSUS

LAND DISPUTE TRIBUNAL KERUGOYA 1ST RESPONDENT

LUCIA WANGU KARIMI2ND RESPONDENT

ESTHER WAMUTIRA KARIMI3RD RESPONDENT

JAMES KARIMI MIANO4TH RESPONDENT

RULING

This is in respect to the applicant's Notice of Motion dated 12th June 2007 seeking the removal of all cautions registered against land MUTIRA/KAGUYU/1290 so as to give effect to this Court's orders dated 23rd June, 2006. The applicant who was formerly represented by Mr. Mutiso advocate argued the application on her own. The said application was supported by her affidavit in which she deponed, inter alia, that on 23rd June 2006, this Court ordered the sub-division of parcel of land No. MUTIRA/KAGUYU/1290 in order to transfer to her the portion that she had purchased and that the respondents were to apply to the Land Control Board for the necessary consent. However, when she made a search, she found that the respondents had placed cautions on the land in order to pre-empt the Court's orders. It is therefore necessary that the said cautions are removed.

There was no response by the Attorney General but Mr. Ndana for the 2nd, 3rd and 4th respondents opposed the application and relied on the replying affidavit of the 2nd respondent and stated that the applicant had filed other applications which were dismissed and the respondents are not aware about the orders of 23rd June, 2006 and wonders how the same were obtained. Counsel added that the 4th respondent is the registered owner of the land and only he can apply for the Land Control Board for its consent for the sub-division and all that the applicant can do is ask for a refund of her purchase price. He therefore sought the dismissal of this application adding that there are other suits pending in the High Court at Nyeri.

I have considered the application and the submissions made by both sides.

This file was originally in Nairobi being High Court Miscellaneous Civil Application No. 536 of 2004 before an order was made on 8th December, 2011 by Hon. Lady Justice Githua transferring it to this Court. I have perused the file which is a skeleton one having been reconstructed on 22nd September, 2010 and I can see that on 23rd June 2006, this file was placed before Hon. Mr. Justice Emukule for the

applicant's application dated 2nd December, 2005 and the following orders were made:-

1. ***“That the respondents and the applicants do apply before the appropriate Land Control Board for the sub-division of MUTIRA/KAGUYU/1290 land” (sic)***
2. ***“That the respondent do transfer one portion to the applicant in terms of the sale agreement between the applicant and the seller”.***

When this matter came up for hearing before me on 30th May 2013, Mr. Ndana for the 2nd, 3rd and 4th respondents stated that his clients were not aware about the above order and were doubtful about its authenticity. For my part, I have no reason to doubt that the said order was made by the Judge on 23rd February, 2006 and the fact that the respondents were not aware about it, if at all, is no reason to question the same. The body of the order itself shows that the application by the applicant dated 2nd December, 2005 and which gave rise to the orders of 23rd June, 2006 was infact opposed by LUCIA WANGU KARIMI (2nd respondent) and JAMES KARIMI MIANO (4th respondent) who filed replying affidavits to the same. In those circumstances, the respondents cannot claim ignorance of the Court's order dated 23rd June, 2006. Having been aware about the application that gave rise to the said order, it was their responsibility to follow up and find out what orders were made against them. In her replying affidavit in opposition to this application, the 2nd respondent alludes to other suits pending at Nyeri High Court and Kerugoya Chief Magistrate's Court adding that the suit property is family land and that she is willing to refund the applicant her purchase price. Those are issues that should have been placed before the Hon. Judge when the application dated 2nd December, 2005 and which gave rise to the orders dated 23rd June, 2006 came up for hearing. The respondents not having appealed against those orders, they are bound to comply with them and that is precisely what the applicant now seeks. By placing cautions on the land in dispute, the respondents are frustrating the execution of the orders of this Court. It is the plain and unqualified obligation of every person against or in respect of whom any order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. And the Court has inherent powers to ensure that Court orders are complied with. Both **Sections 73 (1) of the Land Registration Act 2012 and Section 133 (1) of the now repealed Registered Land Act** gives the Court the power to order the removal of a caution.

Therefore, upon considering all the evidence herein, I find that the applicant is entitled to the orders sought in her application dated 12th June, 2007 and I make the following orders:-

1. ***That all cautions registered against land MUTIRA/KAGUYU/1290 be removed so as to give effect to the orders of this Court dated 23rd June, 2006.***
2. ***That costs of this application be borne by the 2nd, 3rd and 4th respondents.***

B.N. OLAO

JUDGE

3/7/2013

3/7/2013

Before B.N. OLAO – JUDGE

CC – Muriithi

Applicant present in person

Mr. Ndana for 2nd, 3rd and 4th respondents present

1st respondent absent

COURT: Ruling delivered this 3rd day of July 2013 in open Court.

B.N. OLAO

JUDGE

3/7/2013