



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 47 OF 2018

KANGARA MUTUGI KAMAU)

JECINTA WAIRIMU MWANGI)

LUCY WAKIMATHI MUTUGI)

ROSEMARY NJERI IRIMU)

EUNICE WANGUI MUSILI).....APPLICANTS

VERSUS

KAMAU MUTUGI)

NANCY WANJIKU MAINA).....RESPONDENTS

RULING

Introduction

By a Notice of Motion dated 9th September 2020, the Applicants/Plaintiffs sought the following orders:-

(1) That the Honourable Court be pleased to authorize the Deputy Registrar to sign all the relevant documents including the application for transfer forms L.R. 7 & LR 19 and any other necessary documents required as per the certificate of confirmation of Grant issued by the Honourable Court on behalf of KAMAU MUTUGI & NANCY WANJIKU MAINA to give effect of land parcels KIINE/NYANGIO/504 and KIRINYAGA/MARURUMO/57 to the applicant and other beneficiaries.

(2) That this Honourable Court be pleased to do further order that the Baricho and Wanguru Land Control Boards respectively do dispense with the attendance of the respondents KAMAU MUTUGI & NANCY WANJIKU MAINA during the Land Control Board to sub-divide and transfer land parcels No. KIINE/NYANGIO/504 and KIRINYAGA/MARURUMO/57 to the applicant and other beneficiaries.

(3) That this Honourable Court be pleased to do further order that the Land Registrar Kirinyaga to dispense with the production of the title deeds to land parcels No. KIINE/NYANGIO/504 and KIRINYAGA/MARURUMO/57, the Personal Identification numbers (PIN) certificate, Photostat copies of Identity Card and Passport size photograph of the respondents KAMAU MUTUGI & NANCY WANJIKU MAINA while registering and issuing title deeds to the applicant as per (a) above.

(4) That the costs of this application be provided for.

The said application is premised on the following grounds:-

(a) That no appeal has been filed by the respondents to the best of the applicants' knowledge.

(b) That the judgment herein cannot be given effect unless the orders sought are granted.

(c) That it is not possible to procure the signatures attendance to Land Control Boards and the requisite documents to wit original title deed, photocopy of P.I.N, Photostat copy of Identity Card and Passport size photograph of the respondents KAMAU MUTUGI & NANCY WANJIKU MAINA.

(d) That the respondents be condemned to pay costs of this application for not abiding by this Honourable Court's order.

Factual Statements of the Applicant

The Applicant swore an affidavit in support of the application and deponed as follows:-

- (1) That this case was finalized and confirmed on 2nd July 2019 via consent order.
- (2) That he has on several occasions tried to request the respondents to sign the relevant documents to enable the estate to change hands but in vain.
- (3) That they sent the said documents to the respondents advocates for their clients to execute the same but they have refused to do so.
- (4) That the respondents are not in talking terms with the applicant and hence it is not possible to have him play his role in terms of applying Land Control Board for sub-division and transfer, signing the relevant documents, attending Land Control Boards, signing mutation forms (if any), availing the old title deeds, P.I.N. certificate, copy of Identity Card, Passport size photograph and hence orders of this Court are required so as to give effect to the order herein.
- (5) That it is only fair and just that the Deputy Registrar of this Court do sign all the relevant documents, Land Registrar Kirinyaga County be authorized to waive with the requirements.

Factual Statements by the Respondent

The respondents did not file any response to the said application which was heard Ex-parte.

Legal Analysis

I have considered the application, the supporting affidavit and the submissions by counsel appearing for the applicant. I have also considered the applicable law. The judgment of this Court was entered as a result of a consent between the counsels for the plaintiffs and the defendants herein. It is presumed that before the parties compromised the suit, the counsels appearing for the two opposing sides must have agreed to surrender the relevant documents to facilitate the implementation of the order. The respondent is represented by the firm of M/S M.C. Kamwenji & Co. Advocate who has not shed light on why his clients have refused to surrender and or execute the relevant documents to facilitate the execution of the decree of this Honourable Court. **Section 98 of the Civil Procedure Act** provides as follows:-

“Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it”.

My understanding of the law regarding nomination of an alternative person other than the one authorized in law to execute or endorse such documents can only be done upon satisfying itself that reasonable explanation has been given why the person so authorized could not be able to do so. In this case, no explanation has been given why the persons who are authorized in law to execute and/or endorse the documents and instruments of sub-division have not executed the same. Both the plaintiffs and the defendants were represented by advocates who have not explained why they have not prevailed upon their respective clients to execute the same. The exercise of powers by a Court under **Section 98 of the Civil Procedure Act** must be done judicially and not whimsically. I find no reasons and/or sufficient grounds to warrant the exercise of this Court's discretion in nominating an alternative person as sought.

In the consequence therefore, I find the Notice of Motion dated 9th September 2020 lacking in merit and the same is hereby dismissed with no order as to costs. It is so ordered.

Ruling READ, DELIVERED physically and SIGNED in open Court at Kerugoya this 20th day of November, 2020.

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E.C. CHERONO

ELC JUDGE

In the presence of:-

1. Mr. Gori for the Applicant
2. Respondents/Advocate – absent

3. *Mbogo, Court clerk – present.*