

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**  
**ELC NO. 172 OF 2018**

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**PARMINDER SINGH SANDHU** - **1<sup>ST</sup> APPLICANT**  
**NANAK ENTERPRISES WORKS LIMITED** - **2<sup>ND</sup> APPLICANT**

**VS**

**OLYMPIC ESCORT INTERNATIONAL**  
**COMPANY LIMITED** - **1<sup>ST</sup> RESPONDENT**  
**OLYMPIC FRUIT PROCESSORS**  
**LIMITED** - **2<sup>ND</sup> RESPONDENT**  
**KEZIAH WANJIRU NGANGA** - **3<sup>RD</sup>**  
**RESPONDENT**

**RULING**

1. What is before this court is the application date 19/11/24, filed by the applicants against the respondents seeking the following orders;
  - a. That the deputy registrar of the court be authorised to sign, seal, and execute all and any necessary document on behalf of the defendants to give effect to the judgment of the court delivered on 16/12/2021.
  - b. The court does issue an order compelling the National Land Commission/Director of Lands Administration to renew the expired leasehold over LR No 209/4931/4 in favour of the 1st Defendant herein, and to accept the execution and seal of the Deputy Registrar of this court on behalf of the 1<sup>st</sup> Defendant.
  - c. The court shall issue an order requiring the Land Registrar to accept for registration any documents executed under seal by the Deputy Registrar of this court concerning the parcel of land known as LR No 209/4931/4, on behalf of the 1<sup>st</sup> Defendant.

- d. The court to issue an order compelling the Land Registrar to remove the prohibitory orders registered as entries Nos 5, 6, and 7 against the title to the subject land to facilitate the execution of this court's judgment.
  - e. Any order as the court may deem fit for purposes of enforcing the judgment of the court delivered on 16/12/21.
  - f. Costs of the application
2. The application is premised on the grounds annexed thereto and the supporting affidavit sworn on 19/11/24 by Parminder Singh Sandhu.
  3. The deponent stated that in 1997, the applicants filed suit against the Respondents seeking specific performance of the agreement of sale in respect to the suit land. Upon hearing the matter, the court delivered judgement on 16/12/2021 in favour of the applicants.
  4. That notwithstanding the clear terms of the judgment, the respondents have refused to transfer the suit land to the applicants, hence the filing of this application. Despite several attempts to locate the respondents in order to enforce the judgment, their whereabouts have remained unknown, as they cannot be traced.
  5. The respondents' refusal to transfer the suit land to the applicants is unjustified, and unless the court intervenes and grants the orders sought, the applicants will be unable to access the documents they seek or enjoy the benefits of their judgment. To protect the rights of the applicants, it is fair and proper to grant the prayers requested, it was averred.
  6. In a further supplementary affidavit sworn on 10/4/25, the 1<sup>st</sup> applicant stated that, according to the land search obtained from the Lands Registry, the title remains registered in the name of the 1<sup>st</sup> Respondent and is yet to be transferred to the applicants as ordered and decreed by this court. That, undoubtedly, the lease term of the title of the suit land has now expired, and therefore, no transfer can be effected without first renewing the lease.

7. Despite service of the instant application, the respondents failed to file any response to the application. As it stands, it is therefore uncontroverted.
8. With the concurrence of the court, the applicants filed written submissions dated 10/4/25.
9. Counsel for the applicants submitted that their right to property as enshrined under Art 40 of the Constitution is being infringed and is likely to continue being violated if prohibitory entries Nos 5, 6, and 7 against the title continue to subsist on the title.
10. Relying on section 98 of the Evidence Act, the court was urged to order the Land Registrar in Nairobi to accept the registration of any documents executed under seal by the Deputy Registrar of this court regarding the suit land, as efforts to have the 1<sup>st</sup> Respondent issue the title documents and/or transfer the land to them have proved futile.
11. That when the suit was filed in 1997, the leasehold term had not expired. Considering that the land was bought before the expiry of the lease, the court was urged to compel the Land Registrar to renew the lease over the suit land to the bona fide purchasers, the applicants, to enable them to enjoy the fruits of the judgment.
12. Furthermore, it was submitted that their property rights have been hindered by the presence of the prohibitory entries on the title, which should not be permitted to remain indefinitely. The court was urged to utilise its powers under Section 78(2) of the Land Registration Act to remove these restrictions.
13. Having read and considered the application, the supporting affidavits and the submissions, the issues for determination are;
  - a. Whether the court should order the removal of prohibitory entries Nos 5, 6, and 7 on the title.
  - b. Whether the Deputy Registrar should be authorised to execute the transfer in favour of the 2<sup>nd</sup> applicant.

- c. Whether the court should compel the National Land Commission to renew the expired leasehold over the suit land in favour of the 1<sup>st</sup> Respondent and to accept the documents executed and sealed by the Deputy Registrar on behalf of the 1st Respondent.
  - d. Costs of the application
14. It is not disputed that the respondents have not contested the application. That said, the onus of proof remains with the applicants and cannot be shifted, even if the respondents fail to controvert the orders sought in the application.
15. The history of this case is that the applicants filed suit in 1997 against the respondents seeking orders of specific performance of an agreement between the parties. The applicants purchased the suit land from the 1<sup>st</sup> Respondent. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were the authorised agents of the 1<sup>st</sup> Respondent for the purposes of the sale of the suit land. The 1<sup>st</sup> Respondent took possession of the land following the sale. The respondents denied the applicants' claim because there was no sale, and that the applicants were merely tenants in the premises, thus licensees of the 1<sup>st</sup> Respondent.
16. Upon hearing the matter, the court delivered judgment in favour of the applicants as follows;
  - “An order for specific performance be and is hereby issued, and the 1<sup>st</sup> Respondent is ordered to transfer the title No 209/4931/4 to the 2<sup>nd</sup> Plaintiff, Nanak Enterprises Works Limited, forthwith”.
17. A review of the title indicates that three prohibitory court orders were registered in 1980, 1982, and 2009. The applicants did not annex the court orders; therefore, the court is unaware of the nature of these orders.
18. Section 78 of the Land Registration Act provides the manner in which a restriction or a prohibition is removed.

#### 78. Removal and variation of restrictions

- a. The Registrar may, at any time and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.
  - b. Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs.
19. Having noted that the prohibition orders have persisted for over four decades, I agree with the dictum in the case **of Joyce Waithira Mwangi v Thika Land Registrar [2018] eKLR** that restrictions should not remain on a title indefinitely. Allowing a restriction for an indefinite period effectively fetters the right to the enjoyment and ownership of property.
20. Similarly, it would be unjust to uphold the prohibition on the title. In my view, the correct course of action would be to remove it. However, I see no need to order the removal of the said prohibitions given the expired leasehold, as it is understood that all encumbrances expire with the lease.
21. Section 98 of the Evidence Act provides as follows;

Where any person neglects or refuses to comply with a decree or order directing them 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.

22. The applicants contend that the 1st Respondent has refused and/or neglected to transfer the land to the 2nd applicant in accordance with the court orders. As previously mentioned, this application did not receive any response from the 1st Respondent despite being served. The judgement in favour of the applicants remains valid, having been delivered in 2021.
23. In ordinary circumstances, the only way to enforce a judgment and decree of the court would be by authorising the Deputy Registrar of this court to execute all relevant transfer documents on behalf of the 1<sup>st</sup> Respondent, within the bounds of the law.
24. However, the applicant's case is that by the time they attempted to register the title in their name, they discovered that it had long expired.
25. A review of the title presented by the applicants indicates that the leasehold period covered in the title was for 47 years, starting from 1/7/1956. The 1<sup>st</sup> Respondent was registered as the owner of the property in 1976. It is claimed that the 2<sup>nd</sup> applicant acquired the land around 1994, by which time the lease was still valid. The lease mentioned expired by effluxion of time on 30 June 2003. When the applicants obtained judgment in their favour in 2021, the lease had been terminated for over 18 years.
26. What then is the fate of the 2nd applicant, who holds a judgment in its favour but over an expired lease? Essentially, the 2nd applicant has no title to the suit land, as the lease has reverted to the Government of Kenya, the headlessor. Had the applicants disclosed this fact to the trial court, I believe the court would not have issued the orders that it did. That said I find no merit in directing the execution of the transfer documents as it will be an exercise in futility. This prayer is therefore rejected.

27. The 2<sup>nd</sup> applicant's prayer that the court order the National Land or the Director of Land Administration to renew the expired lease in favour of the first respondent must be rejected for two reasons: the National Land Commission was not a party to these proceedings, and therefore, it is inappropriate to issue orders to a stranger to the suit, even if such orders were feasible.
28. Secondly, the law provides for the renewal or extension of leases. Parliament established the National Land Commission to oversee, among other responsibilities, the consideration of lease renewals or extensions. The applicants have not demonstrated to this court that they have applied for the renewal or extension of the lease and that the same was denied by the Commission or at all. This court holds the view that when the law mandates the use of internal mechanisms, it must allow those entities to carry out their duties without interference. I therefore decline the invitation.
29. Although costs of an action or proceeding are at the discretion of the Court, the general principle is that costs shall follow the event in accordance with the proviso to Section 27 of the Civil Procedure Act (Cap. 21). As such, the successful litigant should ordinarily be awarded costs unless, for good reason, the Court directs otherwise. In this case, the application is not challenged, hence the commendable order will be to make no orders as to costs.
30. Final orders for disposal
- a. In the end, I find that the application is without any merit.
  - b. It is dismissed with no orders as to costs.
31. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF  
OCTOBER 2025 VIA MICROSOFT TEAMS.

**J. G. KEMEI**  
**JUDGE**

**Delivered Online in the presence of:**

1. Ms Okoth HB for Mr Mwangi for the Plaintiffs
2. N/A for the Defendants
3. CA- Ms Yvette Njoroge

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