



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELC NO.64 OF 2017

MUIRURI GATIRIHO.....APPLICANT

VS

PETER NDUNGU WAWERU.....1ST RESPONDENT

JOSPHAT MUIRURI.....2ND RESPONDENT

GEOFFREY KAMAU.....3RD RESPONDENT

JOHN WAWERU.....4TH RESPONDENT

LUCY WAMAITHA.....5TH RESPONDENT

RULING

1. Vide a Notice of Motion dated the 31/1/19, the Applicants filed a Notice of Motion seeking the following orders;
 - a. The deputy registrar be authorized to sign and execute all documents necessary for the transfer of parcel NO.LOC 17/KAMAHUHA/229 (suit land) to the Applicant.
 - b. That the Land Registrar be authorized to dispense with production of titles deeds, PIN certificates and passport size photos of the Respondents for the transfer of the suit land.
 - c. That the costs of this application be provided for.
2. The application is expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3 and 3A of the Civil Procedure Act.
3. The application is based on the grounds stated as; the Plaintiff obtained judgment against the Defendant and that there has been no appeal .That the Defendant is not keen on executing transfer forms in favor of the Plaintiff and intends to delay conclusion of the matter .That it is in the interest of justice that the deputy registrar executes the necessarily documents for transfer.
4. The application is contested vide the replying affidavit of Peter Ndungu Waweru that was sworn on the 15/2/2019 .The Defendant does not dispute the fact that judgment was entered against him. However, he depones that he has since appealed as per attached Notice of Appeal. Further that he has not any delayed conclusion of the matter in any way .He prays that the Court dismisses the application that his appeal prosecuted first.
5. The Applicant further reiterates that the notice of appeal has been filed as a knee jerk reaction to the application .That the notice was served after the application filed and served upon the Plaintiff as confirmed by the attached notice which was received by the Plaintiff's counsel on 8/2/2019 .Also that there is no application for stay pending appeal and that the he is entitled to the fruits of his judgment. The appeal was filed out of time and is incompetent since no leave was sought or granted under rule 75(2) of the Court of Appeal rules.
6. The parties canvassed the application by way of Written Submissions which I have read and considered.
7. I have perused the pleadings of the Applicant as set out in the plaint and it is evident that the Applicant did not seek these prayers in the

plaint. It is trite that parties are bound by their pleadings. It is also clear that these are executory orders being sought by the Applicant to enable the Applicant enjoy the fruits of the judgment. The Applicant has averred that the Respondents are not cooperating in executing the necessary documents. He has however not exhibited any steps that he has taken and conversely the evidence of lack of cooperation by the Respondents so as to call in aid the inherent powers of this Court.

8. The Respondents have averred that they have filed a notice of appeal and therefore this application should be dismissed to allow them pursue their appeal. I have looked at the notice of appeal which was filed on the 1/3/19. The judgement in this case was delivered on the 31/10/18 and clearly this notice is being filed way out of time and without leave of extension of time having been sought and granted. More importantly there is no stay of execution in this case and there is nothing to bar the execution of the judgement. The Respondents have not demonstrated the prejudice they stand to suffer if application is granted.

9. The Court has taken cognizance of the fact that the Applicant has in his possession a valid judgement which has not been set aside, vacated or appealed against and it would be unjust for him not to enjoy the fruits of the judgement. Going by the provisions of Art 159 and the inherent powers of this Court I am inclined to exercise my discretion in favour of the Applicant.

10. The application is allowed. The costs shall be met by the Applicants.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 9TH DAY OF MAY, 2019.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Ms Kilonzo HB for Mrs Kimani for the Plaintiff/Applicant

1st – 5th Defendants/Respondents

Irene/Njeri , Court Assistants