



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO 282 OF 2017(OS)

FRANCIS NDIRANGU MWANGI.....1ST PLAINTIFF/APPLICANT

ELISHIBA MBAIRE MWANGI.....2ND PLAINTIFF/APPLICANT

VERSUS

PETER MAINA KINYANJUI.....DEFENDANT/RESPONDENT

RULING

1. Vide Section 1A and 3A of the Civil Procedure Act the Applicants filed a Notice of Motion on the 20/11/19 seeking the following orders;
 - a. The application be heard exparte.
 - b. That the restraining orders issued by the Court on the 8/11/2011 against the Defendant in respect of the land parcel No LOC2/GACHARAGE/860 be lifted and subsequence vacated.
 - c. Costs of the application be provided for.
2. The application is supported by the affidavit of the Francis Ndirangu Mwangi, the 1st Applicant who relied on the grounds adduced thereto and stated that this honourable Court determined this suit in their favour on the 8/11/18 but have been prevented from effecting the registration of the suit land in their names because of a subsisting restraining orders issued by this honourable Court on the 8/11/2011.
3. Further that the said orders have been overtaken by events as the suit has been successfully determined in their favour and urged the Court to vacate the orders.
4. On the 4/12/19 the Applicants Advocate argued the application in open Court and informed the Court that the hearing of the originating summons proceeded by formal proof. That upon the decree being lodged at the Lands office for registration, the Land Registrar has insisted that the restraining orders registered on the title on the 16/11/2011 must be vacated to enable the registration of the decree to proceed.
5. I have reviewed the impugned restraining orders, the subject of this application which state as follows;

“ That the Defendants are restrained by temporary injunction from evicting or in any other manner interfering with the Plaintiffs quiet user and possession alienating disposing off land parcel number LOC2 GACHARAGE/860 pending the hearing of this application interpartes on the 28/11/2011.”
6. The said orders were registered on the suit land as entry No 4 as follows;

“ Court orders – No dealing see ELC (OS) case No 162/2011 Nyeri High Court dated the 8/11/2011.”
7. Order 40 Rule 6 states as follows;

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the Court orders otherwise”.
8. Generally, the life of an injunction is 12 months unless for sufficient reasons the Court orders otherwise. The restraining orders were issued the pending the hearing of the application interpartes on the 28/11/2011. This means the said orders lapsed on the 28/11/2011. The Court has not been shown any extension of the said orders.

9. To the extent that the said orders were for a period that is to say until the inter partes hearing of the application on the 28/11/2011, it is the view of this Court that the said orders lapsed on the 28/11/2011 and there is nothing for the Court to vacate.

10. I see no justifiable reason for the Land Registrar (as claimed) to continue giving life to orders that are long lapsed and or expired by effluxion of time. For avoidance of doubt there are no orders subsisting on the title to bar the registration of the decree of this honourable Court. It is trite that Court orders must not be issued in vain.

11. To the extent that the application seeks orders to vacate or lift the orders that lapsed on 28/11/2011, the application is unmerited for the reasons given above. It is dismissed with no orders as to costs.

12. It so ordered.

DATED, DELIVERED AND SIGNED AT MURANG'A THIS 19TH DAY OF DECEMBER 2019.

J.G. KEMEI

JUDGE.

Delivered in open Court in the presence of:

Rungare for the Plaintiffs

Defendant – Absent

Irene and Njeri, Court Assistants