



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 9 OF 2014

CARREN APONDI ORITO.....PLAINTIFF

VERSUS

NATHAN JEREMIAH NANDWA.....1ST DEFENDANT

DR. GEOFFREY MUKORA GITAU.....2ND DEFENDANT

RULING

1. This ruling is in respect of the 1st defendant's Notice of Motion dated 3rd September 2019. The following orders are sought in the application:

- 1. The plaintiff's advocates Oumo & Co Advocates be ordered to deposit a sum of Kshs. 650,000/= held by them.*
- 2. This Honourable Court be pleased to order the 2nd defendant to implement clause 5 of the consent dated 26th May 2014.*
- 3. Alternatively this matter be fixed for hearing on priority basis.*
- 4. The costs of this application be provided for.*

2. The application is supported by an affidavit sworn by the 1st defendant. He deposed that the parties herein filed a consent dated 26th May 2014 and that he complied with clause 3 of the consent by paying a sum of KShs 650,000. He further paid KShs 750,000 to the plaintiff's advocates for onward transmission to the 2nd defendant's advocates but the said amount was later returned to him. He added that the consent had no default clause and that therefore, the sum of KShs 650,000 should be deposited in court. He urged the court to allow the application so as to bring this matter to an end.

3. Though served neither the plaintiff nor the 2nd defendant filed any response to the application. Counsel for the plaintiff informed the court that he was not opposed to prayer 1 of the application being granted.

4. I have carefully considered the application and the positions taken by the parties. The record herein reveals that on 10th June 2014, the parties in this matter filed a consent dated 26th May 2014, duly signed by the 1st defendant in person and by advocates for the plaintiff and 2nd defendant. The consent is in the following terms:

- 1. That the matter be settled at Kshs. 1,400,000/= (One Million Four Hundred Thousand Only) all inclusive.*
- 2. That each party to bear its own costs.*
- 3. That the 1st defendant to pay the 2nd defendant Kshs. 650,000/= (Six Hundred and Fifty Thousand Only) Banker's Cheque No's...005262 & ...026702..(immediately upon signing these consent)*
- 4. That the balance of Kshs. 750,000/= (Seven Hundred and Fifty Only) to be paid within the next Three (3) Months i.e. on or before 13th August 2014.*
- 5. That the 2nd defendant will surrender the Titles together with signed Transfer Forms, Consent and deliver all documents to the*

custody of M/s Aminga, Opiyo & Masese Advocates to be released upon payment of the balance for transfer and registration to the name of the 1st defendant.

5. The record further reveals that the consent was adopted by the court on 25th July 2014 and has not been set aside or reviewed. In essence therefore, there is judgment in this matter in terms of the consent. Since prayer 1 of the application is not opposed, I will allow that prayer.

6. Regarding prayer 2, I note that there is judgment and an order in terms of clause 5 of the consent. It would thus be pointless making another order to the same effect. Nevertheless, the 1st defendant cannot have his cake and eat it. He must pay the balance of KShs 750,000 pursuant to clause 4 of the consent. He has acknowledged that he is holding the said sum. Since he wants the consent fully complied with and the matter brought to a close, he must do his part by paying the said amount. I will therefore order that he deposits the amount in court as well. Once he deposits the said amount, he can enforce compliance through the usual options such as making an application to cite any party in breach for contempt of court.

7. As for prayer 3 of the application, there cannot be hearing in the matter when there is on record a consent judgment which has neither been set aside nor reviewed. All in all, what is needed are orders to facilitate compliance with the terms of the consent judgment so as to bring the matter to a close.

8. I therefore make the following orders:

i) The plaintiff's advocates M/s Oumo & Co Advocates are hereby ordered to deposit the sum of KShs. 650,000 held by them in court within 21 (twenty one) days from the date of delivery of this ruling. M/s Oumo & Co Advocates to notify the other parties of its compliance within the said period of 21 (twenty one) days from the date of delivery of this ruling.

ii) The 1st defendant is hereby ordered to deposit the sum of KShs. 750,000 held by him in court within 21 (twenty one) days from the date of delivery of this ruling. The 1st defendant to notify the other parties of his compliance within the said period of 21 (twenty one) days from the date of delivery of this ruling.

iii) Upon M/s Oumo & Co Advocates and the 1st defendant complying with (i) and (ii) above, the 2nd defendant to comply with clause 5 of the consent dated 26th May 2014 within 21 (twenty one) days of the total sum of KShs 1,400,000 being received in court.

iv) Upon the 2nd defendant complying with (iii) above, the sums deposited in court under (i) and (ii) above be released to the 2nd defendant.

v) Each party to bear own costs of Notice of Motion dated 3rd September 2019.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th day of December 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Nathan J. Nandwa (the 1st defendant/applicant) present in person

No appearance for the plaintiff/respondent

No appearance for the 2nd defendant/respondent

Court Assistants: Beatrice & Lotkomoi