

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC NO. 193 OF 2015

MILDRED SANDRA IGADI.....PLAINTIFF/APPLICANT

VERSUS

ELIZABETH MUDEITHI FEDHA.....DEFENDANT/RESPONDENT

RULING

The application is dated 20th August 2019 and is brought under Sections 98 and 3A of the Civil Procedure Act and Sections 70 of the Land Registration Act No. 3 of 2012 seeking for orders that:

- a) That Deputy Registrar of this Honourable Court be empowered to execute, on behalf of the defendant/respondent, the application for consent to the Land Control Board, the transfer forms and or any other documents necessary to facilitate the transfer or registration of title No. Tiriki/Shamakhokho/1456 into the plaintiff's name.
- b) The title deed, if any, issued to the defendant/respondent in respect of land parcel No. Tiriki/Shamakhokho/1456 be revoked and or cancelled to facilitate the transfer of the tile thereof into the plaintiff/applicant's name.
- c) Costs of this application be provided for.

It is based on the annexed affidavit of Mildred Sandra Igadi, the plaintiff/applicant and on the following principal grounds that this honourable court ordered and directed the defendant/respondent to execute all the documents necessary to facilitate the transfer of title No. Tiriki/Shamakhokho/1456 into the plaintiff's/applicant's name. That the defendant/respondent has in a bid to disobey this court's orders declined to surrender the title deed and execute the relevant documents of transfer of the suit land to Mildren Sandra Igadi. That it is only proper and just that the orders sought herein be granted.

The respondent submitted that the plaintiff is not entitled to the orders sought given that contrary to the judgement of the court he has not paid to the defendant the sum of Kshs.50,000/= being the outstanding balance of the purchase price of the suit parcel. The plaintiff through her advocates on record had intimated an amicable out of court settlement and the defendant relied on this promise, the application comes as a surprise and a negation of this spirit and the defendant who had filed a notice of appeal withheld further action thus the plaintiff is estopped by conduct. The plaintiff should comply with the terms of the judgement herein thereafter the defendant undertakes to voluntarily execute all necessary documents of transfer of the suit parcel into the name of the plaintiff. The application is premature and made in bad faith in the circumstances.

This court has considered the application and the submissions therein the grounds of this application are that this honourable court ordered and directed the defendant/respondent to execute all the documents necessary to facilitate the transfer of title No. Tiriki/Shamakhokho/1456 into the plaintiff's/applicant's name. That the defendant/respondent has in a bid to disobey this court's orders declined to surrender the title deed and execute the relevant documents of transfer of the suit land. The respondent submitted that the plaintiff is not entitled to the orders sought given that contrary to the judgement of the court he has not paid to the defendant the sum of Kshs.50,000/= being the outstanding balance of the purchase price of the suit parcel. This is indeed untrue as the applicant has attached a copy of a letter to the respondent's advocate attaching a bankers cheque for the same. There is no stay of execution in this matter and court orders cannot be made in vain. I find that this application is merited and I grant the same with costs to the applicant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 18TH DECEMBER 2019.

N.A. MATHEKA

JUDGE