



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 298 OF 2015

(Formerly Nyeri HCC 41 OF 1990)

**RUARE RANCH
LIMITED.....PLAINTIFF**

-VERSUS-

**DAVID MUCHUIRI
KABUGI.....DEFENDANT**

MOSES KIUMU MUCHUIRI

**CECILIA WACHUKA
WACHUIRI**

***(applying as administrators of the estate of David Muchiri Kabugi.....INTERESTED
PARTIES***

RULING

1. This court in its ruling dated and delivered on **2nd December 2016**, directed that the application dated 7th June, 2016 be served upon the firm of Waiganjo Wachira & company Advocates who had filed a notice of change of advocates on 22nd February, 2016 dated 12th February, 2016.
2. Vide an affidavit of service sworn by Stephen Munyao Kisilu, a licensed process server on 3rd March 2017, the firm of Waiganjo Wachira Advocates were served with a mention notice dated 28th February, 2017 and the application dated 7th June, 2017 on 1st March, 2017. The aforesaid firm received and acknowledged receipt of both the mention notice and the application.
3. The matter was not listed on 6th March, 2017 and another mention date was taken in the registry on 7th March, 2017 and served upon the firm of Waiganjo Wachira on 9th March 2017, that the matter had been set down for mention on 13th March, 2017. The firm acknowledged receipt on 9th March, 2017.
4. On 13th March, 2017 when the matter came for mention, only Mr. Gitibi holding brief for Cyrus Maina Counsel for the defendants was present. The plaintiff/respondent had not filed any document opposing the motion. Since the applicants had already urged their motion on 12th July 2016, and there been nothing filed by the respondents for the court to consider, the court gave a ruling date for 24th July, 2017.

5. On 24th July, 2017 the court was engaged in an official matter and did not deliver the ruling as scheduled. Delivery of the ruling was deferred to 3rd January, 2018.

6. As observed in paragraphs 7, 8 and 9 of this court's ruling dated 2nd December, 2016, **Tunoi J** (as he then was) rendered an *ex parte* Judgement on 8th October, 1990 and allowed the plaintiff's case. The Honourable Judge set aside that *ex parte* judgement on 19th February, 1991. No further action was taken in this matter and the suit abated as against the defendant. The suit was reinstated on 10th November, 1999 and the defendant was substituted by Moses Kiumu Muchiri and Joseph Mururi Muchiri on 27th October, 2000.

7. After substituting the defendant with his administrators, Moses Kiumu Muchiri and Joseph Mururi Muchiri on 27th October 2000, the next action should have been to set the matter down for hearing. According to the record, this was never done and the orders to set aside the *ex parte* judgement have never been set aside. Interestingly, the Deputy Registrar without application by either party, issued an order on 19th February, 2004 that:-

1. The defendant to transfer his interest title in the suit land to the plaintiff company within 21 days hereof and in default, the Executive Officer of this court to do so.

2. The Commissioner of Lands to rectify the register of the suit land by deleting the name of the defendant from it.

3. The defendant to pay the cost of this suit.

and a vesting order on 29th June, 2004 that:-

“upon ruling of Judge P.K. Tunoi as he then was dated 8th October, 1990, interest of title No. 3308/03 situated at the South of Rumuruti town

in Laikipia District now vests 50% share on the plaintiff company on one part and Newton Gthingira Kiai on the other part.”

8. On 7th November, 2013 the Chief Executive Officer signed a transfer on behalf of David Muchiri Kabugi for his interest in LR No. 3308/3 (original No. 3308/2/1) measuring one hundred and seventy six decimal two (176.2).

9. It is difficult for me to understand how the Deputy Registrar issued the aforesaid orders and the executive officer proceeded to sign transfer documents when the court record is clear that the matter had never been set down for hearing and no judgment had been rendered in this matter. I must dare say it is disheartening and a serious affront to administration of justice for such to have occurred.

10. Given the above observations, I am called upon to determine whether the court should recall and set aside/discharge the order dated 19th February, 2004 and the vesting order issued on 29th June, 2004 and all consequential execution processes arising therefrom.

11. Taking into consideration the details I have rehashed above, it is clear that there is no other valid order touching on LR No. 3308/3 other than the order dated 19th February, 1991 setting aside the *ex parte* judgment. As stated, any orders of transfer or otherwise ostensibly based on this suit are a nullity as they were not issued by a court of competent jurisdiction. If any action was taken by the plaintiff herein to the prejudice of the estate of the defendant, pursuant to any orders arising from this suit, then the same is wrong and a nullity.

What then should the court do in the circumstances as obtaining now?

12. To the extent that the order issued by the Deputy Registrar dated 19th February, 2004, the vesting order issued on 29th June, 2004 and the transfer signed on 7th November, 2013 have been found to be nullities, I exercise my discretion under **Sections 1A, 1B and 3A** of the Civil Procedure Act to recall and set aside the aforesaid orders.

13. I also award costs for this application to the defendants/applicants.

Orders accordingly.

Dated, signed and delivered at Nyeri this 3rd day of January, 2018.

L N WAITHAKA

JUDGE

Coram

N/A for the plaintiff

N/A for the defendants

N/A for the interested parties

Court assistant - Esther