



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 415'B' OF 2017

FRANCIS MAINA MATHII.....PLAINTIFF/APPLICANT

VERSUS

PETER NGURU BEDAN.....DEFENDANT/RESPONDENT

RULING

1. Following the ruling of this Court delivered on 25 /1/2018 the Plaintiff/ Applicant filed a Notice of Motion dated 22/2/18 seeking the following orders that;

a. The Honourable Court be pleased to give directions and orders that should be followed in choosing the valuer to value the developments effected by the Defendant on Land Parcel No LOC14/Gakurwe/82 and if the Defendant refuses to follow the directions thereby given the he unconditionally vacates the said land.

b. The Honourable Court be pleased to review its ruling delivered and dated 25/1/2018 and the application dated the 30/5/2017 be heard on merit. This Honourable Court may also withdraw the notice of appeal filed on 5/2/2018.

c. The costs to be awarded to the applicant.

2. That application is premised on the following grounds;

a. That since the judgment was delivered by the High Court at Nyeri on 25/1/2001 there were many applications which were heard between the 18/6/2004 and the last order was signed on the 26/3/2008. That is exactly 10 years.

b. Ten years is less than 12 years and therefore according to the provisions of the Limitations of Actions Act the applicant is not time barred.

c. The applicant as a layman the Court be guided by Article 22(3)(d) and Article 159(2)(d) of the Constitution.

d. The parties herein have lived at loggerhead with each other for over forty years (40) years because of this land and therefore it is not time barred if the provisions of limitation of actions Act shall be observed.

e. The Notice of Appeal that I filed at the Registry at Muranga on 5/2/2018 has not been signed upto now.

3. The application is further supported by the affidavit of the applicant sworn on even.

4. The application is opposed by the Respondent in an affidavit sworn on the 4/4/18 and filed in Court on even date.

5. The parties proposed and it was so directed by the Court that the application be prosecuted by way of written submissions. The Applicant and the Respondent filed their submissions on 1/3/18 and 4/5/18 respectively.

6. The Court has considered the Notice of Motion, the affidavit in support together with the annexures thereto, the supplementary affidavit of the Applicant sworn on the 17/4/18, the Respondent's replying affidavit together with the annexures thereto and the submissions of the Applicant and the Respondent. Upon all these pleadings and submissions, the only issues requiring determination of the Court are; A; Whether there is a valid judgment of the Court upon which directions may be issued in the manner prayed by the Applicant in the Notice of Motion.

B; Whether the ruling of 25/1/18 may be reviewed.

C; The Costs of the application will fall in place subject to the determination of the two key issues.

7. As to whether there is a valid judgment of the Court, by a ruling dated the 25/1/18, the Court made a finding that the judgment delivered on 25/1/2001 in respect of the suit land is not capable of enforcement by dint of section 4(4) of the Limitations of Actions Act cap 22 of the Laws of Kenya. In the case of **Willis Onditi Odhiambo Vs. Gateway Insurance Company Limited (2014) eKLR** the word “action” is defined to cover execution of judgments.

8. In view of the analysis in the preceding paragraph, the Court finds that the application of the Plaintiff on account of Prayer A of the Notice of Motion falls in the category of action. This is what section 4(4) of the Limitations of Actions Act bars from being undertaken after expiry of period 12 years from the date of judgment in this case 25/1/01 sought to be enforced. The Court finds that there is no judgment or order of the Court validly on record capable of being enforced by grant of prayer A of the Notice of Motion. Prayer A of the Notice of Motion is accordingly declined.

9. By reason of the finding in the preceding para it may appear academic to consider issue No B. Nevertheless, the Court is justified to consider the issue for the sake of clarity of the matters before it.

10. An order for review of any judgment or order of the Court is provided for under Order 45 rule 1 of the Civil Procedure Rules only upon the following events; error apparent on the face of record; application is made without undue delay; discovery of new and important matter unknown to the parties when the case was being heard; prejudice to the parties;

11. Following the ruling of the Court on 25/1/2018, the applicant filed its Notice of Motion on the 22/2/18. The Court finds that there was no delay in filing the application. In the affidavit in support of the application, the applicant has put on record a chronology of events that have happened on account of the suit land commencing 1979 resting with the date of the affidavit filed in support of this application. The further affidavit of the Applicant and the submissions do not disclose any new matter that has arisen or was incapable of being brought forward in consideration in the ruling made by the Court in 25/1/18. The application has not shown anything erroneous on the Court record. There is neither any evidence of any prejudice suffered or likely to be suffered. In totality the plaintiff has not met the parameters of review of a judgement or order of the Court. Prayer B of the Notice of Motion is accordingly declined.

12. This matter has been in the Courts since 1979 and the issues being adverted by the applicant have been determined at various stages by Courts. Litigation must come to an end. This application offends section 7 of the Civil Procedure Act.

13. In conclusion the Court makes the following orders;

- a. The Notice of Motion dated 21/2/18 be and is hereby dismissed.
- b. The Applicant shall pay the Respondent the costs of this application.

Orders accordingly

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 31ST DAY OF JULY 2018.

J. G. KEMEI

JUDGE

Ruling read in open Court in the presence of;

Plaintiff: Present in person

Mr. Kinuthia HB for Mr G K Kibira for the Defendant.

Ms.Irene and Ms Njeri, Court Assistants