



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC NO. 281 OF 2016

JAMES MACHARIA MWANGI.....PLAINTIFF

=VERSUS=

AGNES WAMBUI.....DEFENDANT

RULING

1. This is a ruling respect of two separate applications. The first application is dated 18th December, 2017. This application was filed by the Defendant and it seeks stay of execution pending appeal. The second application is dated 18th January, 2018. This application was filed by the Plaintiff. It seeks orders that the Executive Officer of the court be authorised to sign all documents necessary to effect transfer of **L.R. No. LOC 18/Gachocho/1811** (suit property) into his name.

2. The Plaintiff had sued the defendant who is now the administrator of the estate of the late Mwangi Karuma Alias Mwangi Karuma “B” (deceased) seeking orders that he had acquired the suit property by way of adverse possession. In a judgment delivered on 8th December, 2017, Lady Justice Gitumbi found in favour of the plaintiff. This is what prompted the defendant to file an application seeking stay of execution pending appeal.

3. The Plaintiff who obtained a judgment in his favour filed an application seeking orders that all transfer documents be signed by an officer of the court and that production of the original title deed be dispensed with.

Application dated 18th December, 2017

4. Both the plaintiff and the defendant are acting in person. The defendant contends that she was aggrieved with the judgment delivered on 8th December, 2017 and that she has preferred an appeal against the said judgment. She contends that judgment was entered in favour of the plaintiff because the plaintiff had misled the court that his wife had died and was buried in the suit property; that she has a letter from the area chief confirming that the plaintiff’s wife is alive. She further contends that the Plaintiff might move and have the suit property registered in his name before the appeal is heard and determined.

5. The plaintiff opposed the defendant’s application based on a replying affidavit sworn on 12th February, 2018. The plaintiff contends that the defendant has not met the threshold for grant of stay pending appeal. He states that the person whom the defendant is calling his wife is his estranged wife whom he separated with many years ago. His wife whom he later married is the one who died and was buried on the suit

property. He produced evidence of burial permit given to him.

6. The plaintiff states that the defendant is only out to frustrate him from enjoying the fruits of his judgment and that the defendant and her children have been threatening him that he will never have the land registered in his name.

7. I have considered the defendant's application as well as the opposition to the same by the plaintiff. The principles for grant of stay pending appeal are well settled. Firstly, the application has to be filed without unreasonable delay. Secondly, the applicant has to demonstrate that he will suffer substantial loss should stay be declined. Thirdly, there has to be security for the due performance of the decree as may ultimately be binding upon the applicant.

8. I have read the defendant's submissions in support of the application. The defendant is claiming not to be an administrator of the estate of the deceased. The defendant seems to have forgotten that in her replying affidavit to the originating summons, she annexed a confirmed grant. The plaintiff has been on the suit property since 1951. The deceased died in 1975. The plaintiff continued to stay on the suit property until 1990 when he filed this suit.

9. The defendant never came to claim the suit property until this suit was filed. There is no demonstration of what loss she would suffer if stay of execution is not granted. Demonstration of substantial loss is the cornerstone of grant of stay of execution pending appeal. As there is no demonstration of any substantial loss which she will suffer, I find that the application for stay lacks merit. The same is hereby dismissed with costs to the Plaintiff.

Application dated 18th January, 2018

10. The plaintiff contends that the defendant has made it clear that she will not sign any transfer forms in favour of the Plaintiff. The defendant and her children are threatening the plaintiff who is aged and ailing.

11. The defendant did not file any replying affidavit to the Plaintiff's application. In her submissions, she states that if there are any threats to the plaintiff, this is not the right forum to raise such issues. She contends that the plaintiff should direct his complaints to the Chief or the police station. In the same submissions, she alleges that she is not the administrator of the estate of the deceased and that even if the orders were granted in favour of the Plaintiff, she will not be in a position to sign transfer forms as she is not an administrator. She further contends that the Plaintiff is seeking to follow shortcuts by seeking that the original title be dispensed with. Any orders granted in her submission would be contrary to the Law of Succession.

12. I have considered the submissions by the parties as well as the application by the plaintiff. It is clear that the defendant will not sign any documents which would enable the decree in favour of the plaintiff to be effected. The conduct of the defendant is clear that she will never sign any documents voluntarily. She is denying that she is the Administrator of the estate of the deceased when it is clear from her own documents that she obtained grant of letters of administration which were confirmed by Thika Chief Magistrate's Court.

13. The plaintiff has a decree in his favour. There is no reason why he should be denied from enjoying the fruits of the judgment. I find that the Plaintiff's application is well merited. I allow the same in the following terms: -

i) The Deputy Registrar of this Court is hereby authorised to sign transfer instruments and all documents on behalf of the Defendant Agnes Wambui to effect transfer of L.R. No. 18/Gachocho/1811 in the name of the Plaintiff, JAMES MACHARIA MWANGI.

ii) The production of the original title in respect of L.R. No. Gachocho/1811 for purposes of transfer into the name of JAMES MACHARIA MWANGI is hereby dispensed with.

iii) The Plaintiff shall have costs of this application.

As I had already stated hereinabove, the defendant's application is dismissed with costs to the Plaintiff.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **19th** day of **July 2018**.

E.O.OBAGA

JUDGE

In the presence of:-

Plaintiff in person

Defendant in person

Court Clerk: Hilda

E.O.OBAGA

JUDGE