



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 61 OF 2017

(FORMERLY NO. 97 OF 2004 (OS))

ERNEST M. MUGAMBI R. IRURI PLAINTIFF

VERSUS

JACOB HENRY KIRIMI1ST DEFENDANT

JACOB KABUTU KANGANGI2ND DEFENDANT

RULING

This ruling arises from the notice of motion dated 5th November, 2018. The said notice of motion is supported by an affidavit sworn by Ernest M. Mugambi R. Iburi on the same date. The applicant is seeking the lifting of an inhibition order registered against land parcel no.s Ntima/Igoki/6906, 6907, 6908, 6909, 6910, 6911, 6912, 6913 & 6914. The said parcels of land are said to be the resultant subdivisions of the original suit land no. Ntima/Igoki/2504. In his supporting affidavit, the applicant contends that on 31st October 2018 this court gave a judgment in his favour. The applicant also deposed that prior to the judgment issued on 31st October 2018, the court had obtained interlocutory judgment against the judgment debtor in the high court of Kenya in HCCC no. 97/2004 (OS) before the establishment of this court. As a result of the said interlocutory judgment, he sub-divided the original land parcel No. Ntima/Igoki/2504 into nine portions and that an order of inhibition was made on 25th January 2006 following the judgment debtors application to set aside the aforesaid interlocutory judgment. A copy of the inhibition order was attached and marked EMMR – 02.

After this court entered judgment in his favour on the 31st October 2018, he now seeks the lifting of the said inhibition order so that he can enjoy the fruits of his judgment.

The respondent opposed that application with a replying affidavit and grounds of opposition dated 17th and 14th November 2018 respectively. In the said replying affidavit, the 2nd respondent deposed that he was dissatisfied with the judgment of this court issued on 31st October 2018 and that he has preferred an appeal to the court of appeal.

The 2nd respondent also stated that if the order of inhibition is lifted, the land shall be exposed and the intended appeal shall be rendered nugatory. The 2nd respondent urged that it is in the interest of justice that the orders remain in force until the intended appeal is heard and disposed.

I have considered the affidavit evidence in support and in opposition to the application herein. I have also considered the applicable law. It is not in dispute that this court delivered a judgment in this case on 31st October 2018. It is not also in dispute that the said judgment is in favour of the plaintiff/applicant. Once the court gave judgment in favour of the plaintiff/applicant, it becomes his right to enjoy the fruits of that judgment.

The 2nd respondent has stated in his replying affidavit that he wishes to appeal against the judgment of the court. He attached a draft notice of appeal.

The respondent's wish to prefer an appeal or a draft notice of appeal cannot operate as a stay of the execution of a decree. The mere fact that the court issued an inhibition order did not mean to last forever.

The intention of the court was to inhibit any transaction on the parcels concerned until the hearing and final determination of the case on merit. That day came to pass when this court delivered its judgment on 31st October 2018. **Order 42 rule 6(1)** reads as follows:

“Order 42 rule 6 (1) No appealed or section of appeal shall operate as a stay of execution or proceedings under a decree or order

appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty on application being made to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside”.

As I write this ruling there is no application made by the respondents for stay of the judgment and decree of this court be issued on 31st October, 2018. The application before me is to lift the inhibition orders of this Hon. Court issued pending the hearing and determination of this suit. Now that the event has eventually come to pass the inevitable must therefore give way to the successful litigant to enjoy the fruits of his judgment. In the final result, I allow the application dated 5th November 2018 as prayed.

It is so ordered.

READ, DELIVERED AND SIGNED BY E. C. CHERONO, ENVIRONMENT AND LAND COURT JUDGE KERUGOYA AT MERU THIS 7TH DAY OF DECEMBER, 2018.

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In the presence of:

Mr. Muthomi for plaintiff/applicant

M/s Munga holding brief for Kiome for 2nd respondent

C/A: Janet