



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 105 OF 2014

PETER MURIITHI GICHOHI PLAINTIFF/APPLICANT

-VERSUS-

RICHARD WAMBUGU GICHOHI DEFENDANT/RESPONDENT

RULING

1. The notice of motion dated **3rd March, 2017** seeks to enforce the judgment of this court delivered on **26th April, 2016**. Vide that judgment, this court allowed the applicant's suit and issued an order compelling the defendant to surrender the title deed for **Daiga/ Umande/Block 2/2139** (hereinafter referred to as the suit property) to the Land Registrar Laikipia for cancellation.

2. The motion is premised on the ground that since the respondent has failed, refused and/or ignored to execute the decree despite many requests by the applicant, this court should grant him the following orders:

(a) That the Deputy Registrar of this Honourable Court be authorised to execute all documents requisite to effectuate the transfer of the parcel of land L.R. No. Daiga/Umande Block 2/2139 in favour of the applicant.

(b) That the Land Registrar, Laikipia Country, be directed to dispense with the production of the title deed to the parcel of Land L. R. Daiga/Umande Block 2/2139 to effectuate the decree herein.

(c) That costs be provided for.

3. The application is opposed. In his replying affidavit sworn on **22nd March 2017**, the 1st respondent

Richard Joe Wambugu deposes that on **19th September, 2016** he filed an appeal No. 54 of 2016 against the judgement. It is his contention that if the orders sought are granted, his appeal will be rendered nugatory. He prays that execution of the decree be stayed pending the hearing and determination of the appeal.

4. When the matter came up for hearing on 23rd May 2017, the applicant chose to rely on the grounds on the face of his application and his supporting affidavit sworn on 3rd March, 2017.

5. The respondent also relied on his replying affidavit sworn on 22nd March, 2017 and on the annexures, for example, certified copies of proceedings and Judgment supplied to him on 23rd August, 2016. Upon

perusal of the court record, I also came across a certificate of delay by the Deputy Registrar and a Memorandum of Appeal.

6. I have considered affidavits and evidence tendered. In the circumstances of this case, I find it necessary to stay the Judgment of this court delivered on 26th April, 2016 pending the hearing and determination of the appeal as failure to do so may render the appeal nugatory if the 1st respondent is successful.

7. For the reasons given, I decline to allow the application and order that execution be stayed pending the hearing and determination of the appeal.

Dated, Signed and Delivered in open court at Nyeri this 17th day of October, 2017.

L N WAITHAKA

JUDGE

In the presence of:

N/A by applicant

N/A by respondent

Court assisant - Esther