REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 504 OF 2017

MOHAMED HUSSEIN, HALIMA MOHAMED

& KHADIJA YURUP MOHAMED

(suing as the administrators of the estate of

AMINA MOHAMED.....APPLICANTS

- VERSUS -

THE COUNTY GOVERNMENT OF NAROK.....RESPONDENT

RULING

The Application before me was brought under order 37 Rule 1 and 6 of the Civil Procedure Rules 2010, Article 40 and 159 of the constitution of Kenya. In the said Application the applicants' are the administrators of the estate of the late **AMINA MOHAMED.**

The Applicants are seeking that the time for executing the judgement that was entered in favour of Amina Mohamed over Land Reference No. Narok Plot 143 now forming part of plot 100 block 3 be extended.

The Applicants are also seeking a vesting order in respect of the aforementioned made and lastly that the said land reference No. be registered and a certificate of title be issued in the name of the Applicants.

The Application was supported by the Affidavit of Halima Mohamed who deponed that she was one of the administrators of the estate of the late Amina Mohamed who was the legal owner of the property that was allocated by the Defendant Narok County Council.

She further stated that her late father who was the owner had instituted Civil proceedings in respect of the plot against one Harshi Duale when he attempted to encroach on their plot. This according to her was Civil Case number 2645 of 1977. She has averred that the court decreed that the suit property was part of her late father's estate. However, upon judgement the advocates then acting failed to apply for a vesting order and further that they have been delayed in executing because they were pursuing the issuance of allotment letters.

In support of the Application the Applicants have annexed grant of letters of administration, a copy of a decree and proceedings.

When the matter came before me for hearing I directed that the Respondent be served with the

Originating Summons and having satisfied myself that there was proper service the suit proceeded for hearing.

The Respondent did not file any response in respect of the proceedings.

I have considered the Application before me and I have heard submissions by the learned counsel for the Applicant. I must point out that this is one of the extra ordinary maters that find their way to the court occasionally.

In this Application the Applicant wishes to extend time for the execution of a decree that was entered 38 years ago which is such along time. The only reason that the Applicant has advanced is that the advocate acting then failed to apply for a vesting order this reason to my mind is not convincing.

A party goes to court to ask for specific orders and when those orders have been granted they are required to execute unless such other grounds such as stay or untold calamities will stop them.

This is a court of Equity and as the old maxim goes equity assists the vigilant and not the indolent. I think a party waiting for over 38 years to seek the court's intervention is so indolent that unless exceptional conveying reasons have been given the court must decline to intervene in such matters.

Be that as it may I wish to point that the Applicants herein have not complied with the provisions of order 22 Rule (6) of the Civil Procedure Rules. The above section provides:-

"Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof".

The decree that the Applicant wishes to extend was not issued by this court nor did the court that issued the said decree transfer it to this court for execution. In view of the above therefore it is my finding that the Originating Summons has been improperly filed before this court and therefore I dismiss the same with no orders as to costs.

Dated, Signed and **Delivered** in open court at **NAROK** on this **3RD** day of **NOVEMBER, 2017**

Mohammed Noor Kullow

Judge

3/11/17

In the presence of:

N/A for the parties

CA:Chuma