



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NYERI**

**ELC CIVIL CASE NO. 84 OF 2015**

**KASTURIAL PALIMAL AGGARWAL.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**CHRISTOPHER NDIRITU KINYUA..... DEFENDANT/RESPONDENT**

**RULING**

1. The notice of motion dated **15th January, 2015** seeks to enforce the judgment of this court (read the Environment and Land Court delivered on 29th October, 2014 in this matter). Vide that judgment **Ombwayo J.**, allowed the applicant's suit for eviction of the respondent from L.R NO. **Nanyuki/Marura/Block 8/1227** (hereinafter referred to as the suit property).
2. The application is premised on the ground that the respondent has resisted all attempts to have him vacate the suit property.
3. To ensure that peace prevails during the eviction exercise, the applicant prays that the exercise be supervised by the Officer Commanding Nanyuki Police Station.
4. When the matter came up for hearing on 10th June, 2015 this court ordered that the respondent be personally served with notice to show cause why he should not be evicted. The application was listed for hearing on 1st July, 2015.
5. On 1st July, 2015 counsel for applicant informed the court that the respondent was served through his wife but had not attended court to show cause why he should not be evicted from the suit property. There being no response to the application and the notice to show cause, counsel for the applicant urged the court to allow the application as prayed.

**Analysis and determination**

6. Even though the respondent did not file a reply to the application and the notice to show cause, upon perusal of the court record, I came across a letter by the respondent to the court dated 23rd March, 2014 where he contends that the decree issued in favour of the applicant is inexecutable for the reason that it concerns a different plot. In support of the respondent's contention, reliance was made on a letter from the Land Registrar Laikipia dated 6th January, 2015. In that letter the Land Registrar addressed the applicant

as follows:-

**“Ref: Nanyuki Marura Block 8/1227 and 618 (Nturukuma):**

**The above matter refers.**

**This office has established that the title deed was issued to you erroneously.**

**You should have been issued with title deed no. 618. You are hereby summoned to surrender title no. Nanyuki/Marura/ Block 8/1227 and you be issued with title No. Nanyuki/Marura/Block 8/618 which is the rightful parcel for you as per the records held in this office....”**

7. That letter was addressed to the applicant and copied to the court.

8. From the record, I also noted that before the applicant filed the current suit, the Land Registrar had raised the same issue with the applicant. In this regard see the Registrar’s letter dated 15th November, 2011 wherein he had addressed the applicant as follows:-

**“by powers conferred upon me under Section 8(b) of the RLA Cap 300 laws of Kenya, you are hereby summoned to appear before the undersigned within 30 days from the date of this letter and that should be 16th December, 2011.**

**You should also bring with you the above mentioned title deed issued on 20th December, 2006 and any other document of the said land, and failure to appear a decision will be made your presence notwithstanding.”**

9. It appears that it is that letter that prompted the filing of this suit.

10. Upon reading the judgment on which the current application is premised, I noted that the concerns raised by the Land Registrar concerning the suit property were not brought to the attention of the trial judge. The applicant has also failed to disclose such serious concerns regarding the title deed he holds in the current application.

11. In light of the foregoing factual situation concerning the case and cognisance of the overriding objective of this court under **Article 159** of the Constitution and **Section 1A** of the Civil Procedure Act and in exercise of the power donated to this court under **Section 3A** of the Civil Procedure Act, I ordered that summons be forthwith served upon the Land Registrar Laikipia to come to court and shed light concerning the circumstances surrounding the issuance of the letter dated 6th January, 2015 despite existence of a court order to the effect that the suit property belongs to the applicant.

12. Consequently, the county surveyor, **Pamela Mutegi** attended court and informed the court that according to records held at the lands office, the suit property is registered in the name of the respondent. In this regard, she explained that there existed a restriction against the title held by the applicant pending rectification of the register. She informed the court that the restriction was placed on 1st December, 2012 and was removed on 8th June, 2015 when rectification was done. She further informed the court that the title held by the respondent was dispensed with vide gazette notice number 1905 dated 20th March, 2015.

13. The court heard that the register was rectified pursuant to a letter dated 6th July, 2016 from Mariara Farmers Cooperative Society to the effect that the applicant was the one allocated the suit property.

14. The court further heard that the respondent was notified that the title deed issued to him was issued erroneously and requested to surrender the title he had so that he could be issued with title in respect of his rightful parcel of land, to wit 618.

15. The witness further informed the court that from the Society's share register, the ballot number for parcel number 1227 was 618, whose owner is the applicant herein. The court was informed that the ballot for the suit property to wit 1227 is 1638, whose owner is the respondent.

16. The land surveyor produced all the documents she referred to in her testimony in court.

17. Upon considering the testimony of the surveyor alongside the documents she produced in support thereof, I established that by the time the judgment sought to be enforced was entered in favour of the applicant, there existed a restriction restricting dealings with the title held by the applicant. That restriction was removed on 8th June, 2015 and a new title in respect of the suit property issued in favour of the respondent herein. (See a copy of the green card).

18. There is also evidence that the title held by the applicant was cancelled. See copy of Gazette notice number 1908 dated 20th March, 2015.

19. There is also evidence to the effect that the applicant was aware or at least notified of the proceedings at the Land Office which he ignored and decided to institute parallel proceedings. In this regard, see the letter from his advocate dated 18th November, 2011 where the applicant's advocate addressed the Land Registrar as follows:-

**“We refer to the letter dated 15th November, 2011 over above captioned matter addressed to our client KASTURIAL PALIMAR AGGARRWAL who has instructed us to courteously respond as follows:-**

**We have advised our client not to surrender his original title deed-NANYUKI/MARURA BLOCK 8/1227 (NTURUKUMA) since the same was validly issued to him and any person dissatisfied is at liberty to file any appropriate suit...”**

20. Having revealed the explanation offered by Pamela and the documents she relied on in support of her explanation, I entertain no doubt that by the time the judgment hereto was delivered there existed unresolved disputes over the suit property.

21. Whereas the applicant knew about the existence of those disputes, it appears that in breach of the obligation placed on him by **Section 1A** of the Civil Procedure Act to disclose all information that could assist the court in making a just determination on the issues brought before it, the applicant deliberately failed to inform the court about those issues. As a result, the applicant obtained judgment in *ex parte* proceedings through none disclosure of material facts to the court.

22. In the circumstances, it is my considered view that had the court been informed of the restriction against any dealings with the suit property, it would not have issued a judgment in favour of the applicant without getting the views of the Registrar concerning the restriction.

23. There being evidence that the title in respect of which the judgment in favour of the applicant was issued no longer exists, I find and hold that the judgment issued in favour of the applicant is inexecutable. Consequently, I find the decline to issue the orders sought.

**Dated, signed and delivered at Nyeri this 18th day of July, 2016.**

**L N WAITHAKA**

**JUDGE**

In the presence of:

Mr. Chwenya for the plaintiff together with

Mr. Gichuhi Mwangi

N/A for the defendants

Court assistant – Lydia