



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**HCC NO 19 OF 2004**

**CATHERINE WAITHIRA MANDE .....APPLICANT**

**VERSUS**

**GERVAS P MWANGI NDEGA .....RESPONDENT**

**RULING**

***(Application to have the Deputy Registrar execute transfer forms and prayer for eviction; judgment already given in favour of the plaintiff against the defendant over ownership of land in dispute; a notice of appeal filed but no indication of any appeal filed 6 years later; no reason to deny the plaintiff the fruits of her judgment; application allowed)***

1. The application before me is that dated 16 November 2015. It is an application seeking the following orders :-

(i) spent

(ii) That this Honourable Court do issue vesting orders in favour of the applicant herein vesting all rights, interests and privileges including registration of all that parcel of land known as Dundori/Muguathi Block 2/195 registered in the name of the respondent herein.

(iii) That the Deputy Registrar be allowed to sign and execute transfer forms for the land known as Dundori/Muguathi Block 2/195 in favour of the applicant herein for the subsequent registration of the applicant as the registered owner thereof by the Land Registrar, Nakuru registry.

(iv) That his Honourable Court do issue eviction orders against the respondent and or his agents and warrants of vacant possession be issued to the Court bailiff to deliver vacant possession of the parcel of land known as Dundori/Muguathi Block 2/195.

(v) That the OCS Bahati Police Station do order (iv) above (sic).

(vi) That the costs of this application be provided for.

2. The application is supported by the affidavit of Catherine Waithira Mande. Despite being served with the application, the respondent has not filed anything to oppose it.

3. I have gone through the file and the affidavit of the applicant. The applicant, as plaintiff, filed this suit on 23 January 2004. She filed suit on behalf of her late husband, one Daniel Mande Munyua. In her suit,

she averred that the deceased was the rightful owner of the land parcel Dundori/Muguathi Block 2/195 (hereinafter, the suit property). He obtained this land by virtue of having purchased shares in Kalenjin Enterprises, a land buying company, in the year 1978. In the year 1989, the deceased leased out a house on the suit property to the defendant. It was pleaded that the defendant took advantage of the deceased's illness to fraudulently procure registration of the land into his name. In the suit, the plaintiff sought orders for a declaration that the suit property belongs to the estate of the deceased and for an order to have the title of the defendant cancelled and in place thereof the name of the plaintiff as administrator of the estate of the deceased be registered. She also sought orders of eviction and permanent injunction against the defendant. The defendant filed defence vide which he refuted all the allegations of the plaintiff.

4. The case was heard and judgment delivered on 16 February, 2010 by Maraga J (as he then was) judgement was entered for the plaintiff as prayed. A Notice of Appeal was filed on 22 February 2010, and I have seen on record that the parties, on 29 June 2010, agreed to have the sum of Kshs. 100,000/= deposited as security in order for the respondent to enjoy a stay pending appeal.

5. In her supporting affidavit, the applicant has averred that no appeal has been filed. She has also stated that the respondent is not willing to sign the transfer forms to have the land transferred to her.

6. I have considered the matter. There is already judgment in favour of the applicant. I am not too sure if the conditions for stay pending appeal were ever complied with. But even then, it is now more than 6 years since the Notice of Appeal was filed. I have not been shown any proof that an appeal has been filed. In my view, an inordinately long period of time has lapsed and if the respondent was serious on the filing of any appeal, one ought to have been filed by now. I see no reason why the respondent should continue enjoying the premises and denying the applicant the fruits of her judgment. The judgment in this case was not a paper judgment and ought to be given effect.

7. It has already been decreed that the applicant ought to be registered as proprietor of the suit property. Since the respondent has been unwilling to execute the necessary forms to have the property transferred to her, I now order the Deputy Registrar to execute all documents required to have the suit property transferred to the plaintiff. The transfer should indicate that the applicant is holding the properties as administrator of the estate of Daniel Mande Munyua and the applicant will hold this title in that capacity until the estate of the late Munyua is distributed. I also allow the prayer for the eviction of the respondent from the suit land and direct the applicant to appoint a court broker/bailiff to execute the order of eviction. The costs of the eviction shall be borne by the respondent. I further direct the OCS Bahati Police Station to provide security to the court broker/bailiff while executing this order of eviction.

8. The applicant shall have the costs of this application.

9. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 9<sup>th</sup> day of November 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of**

Ms. Ndungu holding brief for Mr. Ikua for the plaintiff/applicant

Mr. Kibet for the defendant/respondent

Court Assistant : Wanjohi

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**