



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NYERI

ELC NO. 166 OF 2015

(Formerly Nyeri HCC CIVIL SUIT NO. 76 OF 2012)

TITUS WANJOHI KABACHIA PLAINTIFF (APPLICANT)

-VERSUS-

EUSTUS THANJU MUHIND..... DEFENDANT(RESPONDENT)

RULING

1. Vide a judgment of this court delivered on 20th February, 2015 this court entered judgment in favour of the plaintiff in the following terms:-

“I do find that the plaintiff legally acquired the suit land and was therefore registered as proprietor on the 5.11.2009 and title deed issued to him and therefore is entitled to the orders sought.

Ultimately, this court orders that there be specific performance by the transfer of land Reg. No. Kirimukuyu/Mbogoini/353 to the plaintiff. In the alternative the defendant to refund the plaintiff Kshs.650,000/= plus 50% of the same as agreed in the agreement dated 29th December, 2008. Costs of the suit to the plaintiff. Orders accordingly.”

2. In a bid to enforce the said judgment, the plaintiff brought the notice of motion dated **11th May, 2015** seeking the followings orders:-

1) That this court be pleased to order the defendant (respondent) to sign all the requisite documents to facilitate the conclusion of this matter to wit land transfer form and all other land control board application forms and to surrender his passport size photos, photocopies of his ID card and PIN certificates and the original title deed to the applicant;

2) That if the defendant fails to comply with order (1) above the court to authorize its executive officer to execute the said documents on behalf of the respondent and also order the Land Registrar Nyeri to dispense with production of the original title deed, passport size photos, photocopies of I.D cards and PIN certificate of the respondent and effect the transfer of land No. Kirimukuyu/Mbogoini/353 to the applicant.

3) That costs of the application be paid by the respondent.

3. The application is premised on the grounds that the respondent has failed and refused to sign the

requisite transfer documents and to avail the documents required to effect the transfer.

4. In the affidavit that the plaintiff swore in support of the application, the plaintiff has deposed that judgment in this matter was entered in his favour; that in that judgment, the court decreed that the suit property be transferred to him and that in order to enforce the judgment/decreed of the court he needs certain statutory forms to be signed by the defendant. He reiterates that the defendant has failed and or refused to sign the said documents and to avail the other documents required to effect the transfer, for instance passport size photos, original title deed, photocopies of his identity card and PIN certificate.

5. Lamenting that the defendant is frustrating the execution of the judgment/decreed issued in his favour, he urges this court to grant the orders sought to enable him execute the judgment/decreed issued in his favour and to ensure that the orders issued in his favour are not rendered futile.

6. When the matter came up for hearing, counsel for the plaintiff informed the court that he had served the defendant personally because his attempts to serve the defendant's advocate were futile.

7. Upon being satisfied that the defendant was personally served and failed to file any reply to the application, the court allowed the application to be heard *ex parte*.

8. Counsel for the plaintiff urged the court to allow the application as the same was unopposed.

9. As pointed out herein above, on 20th February, 2015 this court entered judgment in favour of the plaintiff. That judgment, *inter alia*, ordered the defendant to specifically perform his part of the bargain in respect of the agreement executed between himself and the plaintiff vide the agreement dated 29th December, 2008 by transferring the suit property to the plaintiff.

10. There being no objection to the application herein and being of the view that the orders sought are necessary to give effect to the judgment of the court herein, I find the application to be merited and allow it as prayed.

11. Noting that prayer number (1) does not provide for the time within which the defendant should execute and avail the documents specified in prayer (1) of the notice of motion herein, I order that the defendant do avail and sign all the documents necessary for execution of the judgment hereto within fourteen days of service of this order on him.

12. The plaintiff and/or his advocate is directed to effect service on the defendant, through the office of the assistant Chief of the area in which the defendant either resides or works for gain and cause a return of service to this court within three days of service.

13. Subject to proof of service contemplated herein above, the Deputy Registrar of this Court, shall execute the documents necessary to effect transfer of the suit property to the plaintiff, if the time stipulated herein above shall lapse without the defendant availing and executing all documents required to effect transfer of the suit property in favour of the plaintiff.

14. In the event that the defendant fails to avail the documents required to effect transfer in favour of the plaintiff within the time herein stipulated, the Land Registrar Nyeri is upon receipt of transfer documents executed by the Deputy Registrar of this Court, ordered to dispense with production of such documents as original title in respect of the suit property, the defendant's passport size photos, Copy of ID Card and PIN certificates and effect transfer in favour of the plaintiff.

Orders accordingly.

Dated, signed and delivered at Nyeri this 29th day of September, 2015.

L N WAITHAKA

JUDGE.

In the presence of:

Mr. Kamwengi for the plaintiff

N/A for the defendant

Court assistant - Lydia