



IN THE COURT OF APPEAL

AT NYERI

(CORAM: KOOME, ASIKE-MAKHANDIA & MURGOR, J.J.A) NYR.

CIVIL APPLICATION NO. 16 OF 2018

BETWEEN

JEREMIAH M'NJOGU.....APPLICANT

AND

MARTHA NAITORE M'MURITHI.....1ST RESPONDENT

GELVERSE MUTETHIA JOHN.....2ND RESPONDENT

DISTRICT LAND REGISTRAR.....3RD RESPONDENT

DISTRICT SURVEYOR.....4TH RESPONDENT

DISTRICT LAND CONTROL BOARD.....5TH RESPONDENT

THE ATTORNEY GENERAL, MERU CHAMBERS

CIVIL LITIGATION REGISTRY.....6TH RESPONDENT

(Being an application from the order of the Court of Appeal at Nyeri (Gachui, Masime & Omolo, J.J.A) dated 17th May, 1991 and a Ruling of the High Court of Kenya at Meru (G. Gikonyo, J.) dated 25th January 2018

in

High Court Meru Civil Case No. 22 of 1882

RULING OF THE COURT

[1] The Notice of Motion before us dated 16th February 2018, is taken out by *Jeremiah M' Anjogu* (the applicant). As the title of the application suggests, it is not predicated on any of the known Rules of this Court, although the applicant has cited **Section 3A & 3B** of the **Appellate Jurisdiction Act** and **Articles 159** of the Constitution of Kenya. We recognize the applicant is acting in person and for that reason we have taken time to decipher what this application is all about. The applicant is seeking that: -

“That the Hon. Court of Appeal be pleased to make final order in regard to its consent order dated 17/05/1991 in Civil Application No. NRB. 43 of 1991 (NYR 15/90) and in regard to the Court’s letters dated 23-10-1991, 14/07/1992 and 30/04/1993 addressed to the instant applicant and to also enforce the Court’s order since the High Court has finally failed to do so, as is indicated through its Ruling dated 25/01/2018 (the Hon. F. Gikonyo Judge.)”

[2] The record shows that there was a decision of the Court of Appeal at Nyeri being **Civil Application No. NAI 43 of 1991** which was delivered on 17th May, 1991 whereby it was ordered by consent that: -

1. Land Registration No. Ntima/Ntakira/685 is to be divided into three portions as follows:

- i. 1 ½ acres to be transferred to Samwuel M’Mureithi
 - ii. 2 acres to be transferred to Jeremiah Njogu
 - iii. ½ acres to be retained by Twarugoji Kirimunya
2. Janet Tirindi Kathunguri to live on ½ acres retained by Twarugoji.

[3] The applicant states that he is the administrator of the estate of **Twarugoji Kirimunya** (the deceased) who was to retain ½ acre of the subdivision. That in that capacity, he shared the ½ portion of land in accordance with a certificate of confirmation of a grant that was issued in the Succession Cause. He however complains that the sub-division of the ½ portion of land has not been effected due to an objection that was raised by **Samuel M’Murithi** who subsequently died and is being represented by his widow the 1st respondent. Similarly, there is an objection from **Janet Tirindi Kathunguri** (deceased) who is currently represented by the 2nd respondent.

[4] The applicant blames all the respondents for frustrating his efforts to subdivide the land according to the said consent order. He states that the subdivisions were not carried out due to objections that were raised by **Janet Tirindi Kathunguri** (deceased) and **Samuel M’Murithi** (deceased). In addition, the District Land Control Board (the 5th respondent) refused to give the applicant consent to the sub-division in compliance with the consent order; that the District Surveyor (4th Respondent) carried out wrong sub-division and the Land Registrar (3rd Respondent) for transferring the portion of ½ acre to **Janet Tirindi Kathunguri** in 1997 who was not entitled to title but to a life interest. The applicant states in his affidavit and written submissions that soon after issuance of the consent order dated 17th May, 1991, it was misinterpreted by the Meru High Court Deputy Registrar but he petitioned the Honourable Chief Justice calling for his intervention so that the order can be given the correct interpretation by the Court of Appeal.

[5] The application was opposed by **Martha Naitore Mureithi** by her replying affidavit sworn on 9th November, 2011. She first of all indicated that she was not named as a party in the appeal or the application. Secondly, she blamed the applicant for trying to defraud **Janet Tirindi Kathunguri** of the portion of ½ acre that she was allocated in **Civil Appeal No. 21 of 1990**. However, the 1st and 2nd respondents did not oppose the application and neither did the government entities that are named as the 3rd, 4th, 5th, and 6th respondents. The 2nd Respondent filed some written submissions dissociating herself from the unfounded disputes brought about by the applicant in this application.

[6] We have considered this application within the general overriding objectives in the administration of justice that aims at facilitating a just, expeditious proportionate and affordable resolutions of appeals. It is apparent from the scanty documents and the averments by way of the applicant’s affidavit and submissions that there are several suits that were filed in relation to the same subject matter being: -

- **Civil Appeal No. 21 of 1990**
- **Succession Cause No. 351 of 2002**
- **Civil Appeal No. 30 of 2003**
- **Misc. Civil Appeal No. 30 of 2004**
- **J.R No. 5 of 2008**
- **J.R No. 31 of 2013**
- **J.R No. 7 of 2016**
- **Misc. Civil Application No. 19 of 2016**

[7] As regards the instant application, we are not concerned about the other suits which are not before us, save for the order issued in **Civil Appeal No. 21 of 1990** which was before this Court. That appeal was settled by a consent order issued by the Deputy Registrar of the Court of Appeal dated at Nyeri on the 17th day of

May, 1991 as follows:-

“ORDER

THIS APPLICATION coming up for hearing this day, **AND UPON HEARING Twarugoji Kirimunya**, the applicant, present in person, **Janet Tirindi Kathuguri** respondent in person, **Samuel M’ Murithi** the 1st interested party present in person **AND UPON** the affidavits of **Twarugoji Kirimunya** sworn on **31st October, 1990** and **3rd May 1991** respectively in support of the motion thereof, **IT IS HEREBY ORDERED BY CONSENT THAT:-**

- 1. **The application for stay of execution, be and is hereby dismissed.**

2. Land Registration No Ntima/Ntakira/685 is to be divided in to three portions as follows:
3. 11/2 acres to be transferred to Samuel M'Mureithi.
4. 2 acres to be transferred to Jeremiah Njogu.
5. ½ acres to be retained by Twarugoji Kirimunya.
6. Janet Tirindi Kathunguri to live on ½ retained by Twarugoji for life.
7. Fees of subdivision be paid by Jeremiah Njogu and Samuel Mureithi equally.
8. There be no order as to costs.

GIVEN under my hand and the seal of the Court at Nyeri 17th day of May, 1991.

M. K. K. SEREM

REGISTRAR”

[8] What final orders are we supposed to determine in this application in the face of the above? We are afraid none can issue because it was up to the parties to enforce the order and if there were any questions **Section 34(1) of the Civil Procedure Act** provides: -

“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”

[9] We therefore find the application before us is procedurally wrong as the applicant has tried to file a separate and distinct matter arising from the order of this Court instead of following up the enforcement. As stated above, the law prohibits filing of a separate suit for execution which this applicant is alluding to. We also need to point out that execution proceedings ought to take place in the court from which the order appealed against emanated and in this case, it was the High Court in Meru. Once this Court issued the order by consent that settled **Civil Appeal No. 21 of 1990**, it became *functus officio* in as far as the matters therein were concerned. The enforcement of the order fell upon the parties to initiate the execution proceedings in the Meru High Court.

[10] In conclusion, we find the motion dated 16th March, 2018 devoid of any merit and we accordingly order it dismissed. We however make no order as to costs as the matter was considered virtually and we are not certain whether the parties named were properly joined in **Civil Appeal No. 21 of 1990**.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.

M. K. KOOME

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JUDGE OF APPEAL

ASIKE-MAKHANDIA

.....

JUDGE OF APPEAL

A. K. MURGOR

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR