



Kariuki v Wolff; Kariuki (Interested Party) (Environment & Land Case 330 of 2017) [2024] KEELC 3746 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3746 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 330 OF 2017**

**LN MBUGUA, J
APRIL 24, 2024**

BETWEEN

RICO KINYARIBO KARIUKI APPLICANT

AND

RENATE WOLFF DEFENDANT

AND

RENE NJUGUNA KARIUKI INTERESTED PARTY

RULING

1. Before me is the Plaintiff's Notice of Motion dated December 4, 2023 seeking the following orders;
 - i. That an order of injunction do issue restraining the Respondent's agents, servants and any persons acting/claiming through or in the name of the Respondent from accessing L.R 12661/61 situate in Karen pending hearing and determination of this Application.
 - ii. That this Honourable Court do provide guidance on the contents of the court order issued on January 15, 2019 in so far as it relates to the persons allowed to access the LR 12661/61.
 - iii. That in the alternative, the honourable court do issue clarification on the use of the word "Agent" in the court order of 15th January 2019.
 - iv. That this Honourable court be pleased to review the determined amount of Ksh. 7,058,197/= stated in the judgment dated 1st October 2018 in ELC Case No. 330 of 2017 delivered by Honourable Justice B. Eboso, in order to account for inflation and the current market trends.



- v. That the Officer Commanding Police Station Karen Hardy Police Station do assist in the implementation of the orders herein as against the Respondent.
 - vi. That this Honourable Court do award any other orders it may deem just, fit and expedient to award in the interests of justice.
 - vii. That the costs of this Application be provided for.”
2. In response to the said application, the defendant and the interested parties filed a preliminary objection dated January 19, 2024 averring that plaintiff’s application is res-judicata, hence the same should be dismissed.
 3. The court will deal with all the issues raised at once.

Case for the Plaintiff / Applicant

4. The plaintiff’s case is premised on the grounds set out on the face of the application and his supporting affidavit of December 4, 2023. He contends that vide the judgment delivered by this court on 1.10.2018, the court decreed that the defendant was to pay him ksh. 7, 058 197 as consideration for the value of the developments in the suit premises. That the defendant also gave him the 1st right of purchase, but was demanding an unfavorable amount of Ksh. 80,000,000.
5. He contends that the defendant was allowed to access the suit premises vide the court order of January 15, 2019 and has been using the same to harass the plaintiff. That the defendant has also been trying to sell the suit land without reimbursing him.
6. He also desires that the judgment be reviewed to cater for the inflation as it was issued more than 5 years ago.
7. In his further affidavit, he contends that the defendant and the interested party acknowledge that judgment was entered in his favour, thus the decretal amount was to be deposited prior to the sale.

Case for the Defendant and the Interested Party.

8. The case of the defendant and the interested party is anchored on the Preliminary Objection dated January 19, 2023 as well as the replying affidavit of the interested party dated February 7, 2024. Their case is that the issues raised in the application are the ones which were raised in the plaint and the application is an academic exercise. They aver that the plaintiff was denying them access to the suit premises, that is why they sought assistance from the court on January 15, 2019.
9. I have considered all the issues raised herein including the rival submissions. Judgment herein was delivered on October 1, 2018 in the following terms;
 - “ a) a) Prayers (a), (b), and (c) of the plaint are declined.
 - b. Should the defendant actualize her desire to sell the suit property, the first offer shall be given to the plaintiff to purchase the property at the market value to be solely determined by the defendant’s Valuer, the consideration to be paid by the plaintiff shall be less the sum of Kshs.7,058,197.25 which is the assessed fair value of the plaintiff’s developments on the suit property.
 - b. In the event that the contemplated sale does not take place or sale to the plaintiff fails for whatever reason, the defendant shall deposit in court the



above sum of Kshs.7,058,197.25 and shall thereafter be at liberty to proceed to deal with the suit property in any manner she desires. The plaintiff shall be at liberty to apply for release of the deposited money to himself.

b. In light of the nature of the orders herein, each party shall bear own costs of the suit.

10. Thereafter the defendant filed an application seeking orders inter alia a review of the assessed value of the land of which the court delivered a ruling on 27.4.2022 dismissing that application.
11. This time round, it is the plaintiff who is now seeking a review of the judgment to cater for inflation, and to give directions on who should access the land in view of the court's orders of January 15, 2019.
12. On review, this court makes reference to paragraph 18 of its ruling of April 27, 2022, to the effect that litigation has to come to an end, hence the court is functus officio on matters review of the said judgment.
13. On the import of the orders of January 15, 2019, the fall back is again the judgment of October 1, 2018. Contrary to plaintiff's claim that the judgment was in his favour, his prayers (a-c) as set out in the plaint were dismissed. The plaintiff is therefore not the beneficial owner of the suit property and he cannot seek protection from this court as an owner or occupier of that land. At least not until he becomes the owner through purchase of that land. The orders given on January 15, 2019 are therefore geared towards effectuating the court's judgment. Any variation therefore would in essence amount to a variation of the judgment.
14. In essence, the plaintiff cannot restrain the defendant on how to deal with the land as that prayer was disallowed in the judgment. The only rider is that;

“Should the defendant actualize her desire to sell the land, the plaintiff shall get the first offer”
and “if the contemplated sale doesn't take place or sale to the plaintiff fails, the defendant shall deposit in court the sum of Ksh 7,058,197”.
15. The mandate of this court lies in the ambit of the execution of the judgment and nothing more. Thus if the plaintiff is of the view that the contemplated sale of the land to him has failed, his recourse is only on the payments mentioned in the judgment. Nowhere in the 8 prayers in the current application, has the plaintiff sought to execute the judgment in relation to the aforementioned amount. In the circumstances, his application dated December 4, 2023 is hereby dismissed with costs to the defendant and the interested parties.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mwendwa for Defendant and Interested Party

Court assistant: Eddel

