



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 920 OF 2004

MOSES MBUGUA.....PLAINTIFF

-VERSUS-

MARY NYAMBURA NGETHE.....DEFENDANT

RULING

The application before the court for determination is the notice of motion dated the 14th day of October, 2019, brought by the Plaintiff/Applicant under Order 51 Rule 11 and Order 24 Rule 3(1) of the Civil Procedure Rules. The applicant has sought the following orders;

1. Michael Chege Muua and Naomi Wanjiru Munene be substituted with the plaintiff in this suit.
2. That the caution lodged by the defendant Mary Nyambura Ngethe on 5/11/2004 on land reference number Gatamaiyu/Kagaa/146 be lifted forthwith.
3. That costs of this application be awarded to the applicant.

The same is supported by the grounds set out on it's body and on the annexed affidavit sworn by Michael Chege Mbugua, on the 14th day of October, 2019.

The deponent who is one of the administrators of the estate of Moses Mbugua, who was the plaintiff in this matter depones that, on the 5th day of November, 2004, the defendant lodged a caution on the deceased's land reference number Gatamaiyu/Kagaa/146 as evidenced by a copy of the official search marked as annexure B in his supporting affidavit.

He avers that, on the 17th October, 2012, vide a judgment of the court delivered in this matter, the defendant was restrained by a permanent injunction from trespassing onto the deceased's aforesaid land after the deceased was found to be the rightful proprietor of the same.

That despite the said judgment, the defendant has failed to remove the caution to enable the beneficiaries sub-divide the land among themselves since their father, who was the plaintiff died on the 17th day of June, 2008. He has thus urged the court to order the caution removed as it does not serve any useful purpose.

When the application came up for hearing on 18th February, 2020, neither the defendant nor her advocate attended court despite having been served with a hearing notice and therefore, the same proceeded exparte.

The court has considered the application and the supporting affidavit. I have also perused the original copy of the judgment delivered on the 17th day of October, 2012 in which the court found that the plaintiff in this case, who is now deceased, proved his case on a balance of probabilities and the defendant's counter claim was dismissed. The court entered judgment for the plaintiff, deceased, and declared his personal representatives to be the absolute owners of land reference number Gatamaiyu/Kagaa/146 and found that the defendant does not have a legitimate claim to any portion of the said land.

The court further ordered that the defendant, her agents or employees be permanently restrained from trespassing on the land.

The court was not told whether the defendant has challenged this judgment in any way but in the absence of evidence to that effect, the orders that the court gave in its judgment delivered on the 17th day of October, 2012 still stands and are final.

The court has taken note of the official search marked as annexure "B" to the supporting affidavit. It shows that a caution was lodged by the defendant herein on the 5th day of November, 2004 which caution the administrators to the estate of the deceased have sought for orders to

have removed so that they can be able to subdivide the land.

Having read the considered judgment delivered in this matter, this court finds no reason why the orders sought herein cannot issue. The application dated the 14th day of October, 2019, is allowed as prayed.

Costs of the application are awarded to the applicants. It is so ordered.

Dated, signed and delivered at NAIROBI this 27th day of February, 2020.

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L. NJUGUNA

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant