



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL CASE. NO. 35 OF 2019

(FORMERLY ELC NO 166 OF 2012)

JANE WANGARE WAWERU.....PLAINTIFF/APPLICANT

VERSUS

LEAH NJOKI WACHANGA.....1ST DEFENDANT/RESPONDENT

KARANJA WACHANGA.....2ND DEFENDANT/RESPONDENT

RULING

1. Subject of this suit are land parcels **No. Dundori/Lanet Block 5/280 and 282 (Kiamunyi "A")** registered in the names of the plaintiff Jane Wangare, having been registered in her favour about the 15th July 1997.

2. By an application dated 26th April 2019 the said Jane Wangare approached the court, under provisions of **Section 68 of the Land Registration Act Order 8 rule 3 CPR** among others for orders that

(1) Spent

*(2) This Honourable court be pleased to issue an order of inhibition inhibiting any registrations and dealings on land parcels **Dundori/Lanet Block 5/280 and 282 Kiamunyi "A"** pending hearing and determination of this suit.*

(3) That the court do grant leave to the plaintiff to further amend her plaint.

3. On the basis that the 1st Defendant/Respondent Leah Njoki Wachanga has caused the **Title Dundori/Lanet Block 5/280** to be fraudulently registered in her name pursuant to purported orders issued in **Nakuru HCC NO. 33 of 1998**, and pursuant to a **Kenya Gazette Notice dated 23rd September 2016**, that directed that the said land parcel to revert to Nakuru North Company.

4. It is further stated that the applicant was not a party to the said case, **Nakuru HCCC No 33/1998** and there exists no decree issued in the suit for the said cancellation, as the suit was dismissed for want of prosecution among other grounds.

5. The applicant swore the supporting affidavit on the 26th April 2019, and exhibited the Title Deeds, certificate of official search, Kenya Gazette for the 23rd September 2016, a decree in HCCC No 33/1998 and court ruling in the case dated 13th November 2009 (M.G. Mugo J) as she then was), as well as the plaint in the said suit.

Annexed further is an order issued on the 17th January 2016 in Nakuru Chief Magistrates case No 1783/2005, supplementary affidavit was also sworn and filed on the 28th May 2019.

6. In opposing the application the **1st Respondent Leah Njoki** swore the replying affidavit on the 21st May 2019, annexed the Kenya Gazette of 24th November 2017, Decree in HCCC No 33/1998 a ruling thereof dated 9th February 2015 (Mshila J) and a judgment in Nakuru CMCC No. 6816/2008, as well as a further affidavit sworn and filed on the 2nd July 2017.

7. Both parties filed written submissions.

Parties in **Nakuru HCC No. 33 of 1998** as can be seen from the applicant's documents, the plaint and the Decree are not the parties in the present suit, nor are they parties in the Nakuru CMCC Criminal case No. 6816/2008.

The only similarity in the cases is the locus of the suit properties, being **Kiamunyi “A” within Nakuru Kiamunyi Co. Ltd - LR Dundori/Lanet Block 5.**

8. I have seen the Decree in **HCCC No. 33 of 1998.** The suit was dismissed for want of prosecution, meaning, that the *status quo* as at date of filing of the suit remained.

In particular, claim under ***prayer (C) of the plaint - an order for cancellation of all title deeds issued following the substituted map and register and restitution of the plots taken away from the plaintiffs to be rightful owners was not granted.***

I have also confirmed that the applicants plots except plot No. 282 were not among the ones stated as belonging to the plaintiffs. The fourth defendant therein John Mwangi Njoroge lay claim on plot No 282. The claim was however dismissed, by virtue of the dismissal of the suit.

9. There is also the Chief Magistrate’s court order issued on the 17th January 2006 in **CMCC no 1783/2005.** The parties are the same as those in the present case. This was an order of injunction to restrain the defendant from selling or in any other way dealing with the suit properties **Dundori/Lanet Block 5/282 and 280.**

I have not been told that those orders have been discharged or vacated. They are therefore in force.

10. There are **two sets of “decrees” in HCCC No. 33/1998.** One purportedly issued on the **18th December 2002, cancelling all the titles including the applicants two titles.**

The other is issued on the **10th June 2008 dismissing the suit for want of prosecution.**

11. Clearly, there is a serious dispute arising out of the two decrees, as to the legal ownership of the two suit properties, the plaintiff/Applicant claiming to be the *defacto* owner while the defendant claims to be the registered, and therefore legal owner.

It is instructive to state that once a case has been dismissed, any interim or interlocutory orders thereto stand vacated and discharged.

12. **Section 68(1) of the Land Registration Act 2012** provides that the court may make an order (hereinafter referred to as inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease, or charge.

13. The court in **Japheth Kaimenyi M’ndatho –vs- M’ndatho M’mbwiria (2012) e KLR** rendered that, for such an order to be granted, the applicant must satisfy the following conditions.

(a) That the suit property is at risk of being disposed off or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.

(b) That the refusal to grant of inhibition would render the applicant’s suit nugatory.

(c) That the applicant has an arguable case.

14. Both parties hereto have claims over the suit property. If left unpreserved, the registered owner, having legal ownership is at liberty to deal with the property as she may wish, including subdivision, sale, transfer, to the detriment of the other.

15. There is no dispute that there has been numerous cases touching on the plots at “Kiamunyi “A” and Kiamunyi Farmers Company Limited which are pending in the Nakuru courts. I have had occasion to deal with some question on the legality of the allocations of the plots to the shareholders and members of the Kiamunyi Farmers company. They are numerous as the aggrieved shareholders are so long as each aggrieved shareholder or allottee files a suit to urge on his plot, many cases will be filed.

16. My very considered opinion is that, all the cases touching on double allocations of **plots within the “Kiamunyi A” farm** by the company, which are basically stated to have been fraudulent, should be called together, and consolidated for hearing and determination.

These matters ought to be heard once and for all, to finality, before the appropriate court, in this case the Environment and Land Court, which would bring a rest to these disputes.

17. That way, all the wars between the company and its shareholders, and other land allottees that continue to cluster all the courts with individual cases, will be brought to conclusion. In that manner, the alleged fraudulent allocations of the various plots within the “Kiamunyi A” farm to shareholders and others would thus be settled once and for all.

18. I am satisfied that the applicant meets the threshold for the grant of the orders she seeks in the application to preserve what she believes to be her rightful ownership of the two properties.

In the same breath, the veracity and justification of the two “court decrees” would be resolved by evidence, upon full hearing of this suit.

19. For the interest of justice and preservation of the suit plots, prayer No. 2 and 3 in the application dated 26/4/2019 are granted.

The applicant is directed to further amend her plaint and serve within 14 days.

I make no orders as to costs.

Orders accordingly.

Delivered, signed and dated at Nakuru this 20th Day of February 2020.

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J.N. MULWA

JUDGE