



REPUBLIC OF KENYA



KENYA LAW
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Muriu & 3 others v Onesmus & 2 others (Environment & Land Case 61 of 2022) [2023] KEELC 21035 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21035 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 61 OF 2022
A OMBWAYO, J
OCTOBER 26, 2023**

BETWEEN

**DR. FRANCIS KINUTHIA MURIU 1ST PLAINTIFF
CHRISTINE MUTHONI WANJEMA 2ND PLAINTIFF
ERIC MURIU WANJEMA 3RD PLAINTIFF
JEAN GATHONI WANJEMA 4TH PLAINTIFF**

AND

**MICHAEL WANJIHIA ONESMUS 1ST DEFENDANT
CECILIA WANGUI MUTURI 2ND DEFENDANT
TERESIAH MUKUHA MACHARIA 3RD DEFENDANT**

RULING

1. The 1st defendant/applicant filed the instant application dated September 12, 2023 seeking the following orders:
 1. Spent.
 2. Spent.
 3. Spent.
 4. That pending the hearing and determination of this suit, the Honourable court be pleased to issue an order of prohibition to prohibit any dealings on the property known as Nakuru/ municipality Block 4/494.
 5. That cost of this application be borne by the Respondent.



2. The Application was based on grounds set out and supported by the affidavit of Michael Wanjihia Onesmus the 1st defendant/applicant herein sworn on September 12, 2023.
3. It was stated that he is a beneficiary of the suit property previously known as Nakuru Municipality Block 4/114 through a certificate of confirmation of grant issued on June 18, 2008. That owing to the non-cooperation by the 1st plaintiff/respondent in meeting the costs accruing from the property he opted to subdivide for each to have their individual titles.
4. That he was registered as the owner of Nakuru Municipality Block 4/493 while the respondent registered as the proprietor of Nakuru Municipality Block 4/494. He stated that the respondent never compensated him for the costs incurred in subdividing the suit property. He added that the respondent filed the instant suit seeking cancellation of the issued title deeds alleging that the property ought to have been subdivided into three portions.
5. It was further stated that this court on March 21, 2023 had issued an order of prohibition prohibiting any dealings in the suit property being Nakuru Municipality Block 4/493. That no order had been issued against the Respondent's portion Nakuru Municipality Block 4/494. He added that the Respondent has been utilizing his portion of the property which has since curtailed him from utilizing his adjacent property.
6. The applicant stated that the respondent intends to sell his portion of the property which is the subject matter of this suit thus apprehensive that his portion will remain the subject of litigation which the respondent filed.
7. In conclusion, the applicant urged the court to allow the instant application as prayed.

Response

8. The 1st plaintiff/respondent filed his replying affidavit dated September 27, 2023 on September 28, 2023. He deposed that the 1st Defendant/Applicant is no longer the owner of Nakuru Municipality/ block 4/493 as he transferred the same to the 2nd and 3rd defendants on 31st November, 2022. He further deposed that the Applicant single handedly caused a subdivision of Nakuru Municipality Block 4/114 secretly in the name of the Respondent and the 2nd and 3rd defendants.
9. It was his contention that he is not selling his portion as there is no executed sale agreement. That his intention is to have the interest of their deceased brother taken care of hence he filed the present suit.
10. In conclusion her urged the court to order parties comply with pretrial directions to have the matter be heard in finality since the suit involves siblings.

Submissions

11. None of the parties filed their submissions.

Analysis and Determination

12. This court has considered the application and is of the view that the main issue for determination is whether the Applicant is deserving of the prohibition orders sought for.
13. The applicant contends that the respondent intends to dispose off the said property to one Mohammed Abdi Nduyo. He annexed a copy of a letter from the alleged respondent's advocate. The respondent on the other hand objected to the said allegation stating that he had no intentions of selling his property and denied having seen the said letter from the advocate.



14. This court will certainly not belabor itself interrogating the case as it had earlier done, instead it associates itself with its ruling delivered March 21, 2023. I find that it would not be prudent for any of the parties to interfere with any of the suit properties pending hearing and determination of the main suit. As earlier established by this court the disputed property being Nakuru Municipality Block 4/114 was subdivided and the resultant properties are Nakuru Municipality/Block 4/493 owned by the applicant and Nakuru Municipality/ Block 4/494 owned by the Respondent.
14. This court had earlier issued an order of prohibition prohibiting any dealings with Nakuru Municipality/Block 4/493. In the interest of justice, I am therefore inclined to issue the same orders with regards to the suit property herein Nakuru Municipality/Block 4/494 in order to protect the subject properties pending the hearing and determination of the suit.
15. In the upshot, the application dated September 12, 2023 is hereby allowed with costs to the 1st defendant/applicant. I thereby grant an order of prohibition to prohibit any dealings in the suit property Nakuru Municipality/Block 4/494. It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY ON THE 26TH OF OCTOBER 2023.

A.O.OMBWAYO

JUDGE

