



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ENVIRONMENT AND LAND COURT DIVISION

E.L.C CASE NO 16 OF 2016

VERONICA KASWII KAITHA.....APPLICANT

VERSUS

GEORGE GITUMA KAIRANYA.....1ST RESPONDENT

BERNARD KOBIA.....2ND RESPONDENT

J U D G M E N T

1. In her plaint dated 8th April, 2016, the Plaintiff seeks Judgment against the defendants for:-

i. A Permanent Injunction restraining the 1st Defendant from removing or in any way interfering with the Plaintiff's continued quiet enjoyment, occupation and/or use of plot known as NYAMBENE/KATHIRI/18.

ii. A Permanent Injunction restraining the 2nd Defendant from removing or in any way interfering with the Plaintiff's quiet enjoyment, occupation and/or use of plot known as NYAMBENE/MULIKA/6944.

iii. Cost of this suit

iv. Damages.

v. Interest on (iii) and (iv).

2. The Plaintiff filed an interlocutory application dated 8th April, 2016 which seeks orders:-

1. THAT this application be certified urgent and heard ex-parte in the first instance

2. THAT pending the hearing of this application inter-partes an injunction be issued directed at both Defendants herein, their agents, servants howsoever restraining them from removing or in any way interfering with the Plaintiff's continued occupation and/or possession and use of all those parcels known as NYAMBENE /KATHIRI/18 and NYAMBENE/MULIKA/6944.

3. THAT pending the hearing and determination of this application inter-partes an injunction be issued restraining the 1 st Defendant either by himself, servants, agents howsoever from erecting any permanent structures on all that parcel of Land known as NYAMBENE/KATHIRI/18.

4. THAT the O.C.S Mikinduri Police Station to ensure compliance.

5. THAT costs of this application be provided for.

3. The application is supported by the Affidavit of VICTORIA KASWII KAITHA and has the following grounds:

1. THAT the Plaintiff is a widow, the husband (ELIAS KAITHIA CHOKERA deceased) died on the 27th September, 2011. The deceased had the following surviving him at the time of death:-

- a. **VICTORIA KASWII KAITHIA**
- b. **ELIZABETH KAGWIRIA**
- c. **WILSON KIMATHI KAITHIA**
- d. **CAROLINE KATHAMBI KAITHIA**
- e. **ANASTASIA KAREGI KAITHIA**
- f. **MICHAEL KIRIMI KAITHIA**
- g. **MIRIAM MUGURE KAITHIA and**
- h. **CHRISTINE NKATHA KAITHIA**

2. THAT the deceased being the Plaintiff 's husband acquired the following properties prior to his death:-

- i. **NYAMBENE/ATHWANA/718**
- ii. **NYAMBENE/KAGUATA/2941**
- iii. **NYAMBENE/MIKINDURI/11022**
- iv. **NYAMBENE/ MULIKA/6944**
- v. **NYAMBENE/KINGO/4404**
- vi. **NYAMBENE/KARITHI/2606**
- vii. **NYAMBENE/KATHIRI/18**
- viii. **NYAMBENE/KATHIORI/5739**
- ix. **NYAMBENE/IGUUNO/2279 and**
- x. **NYAMBENE/KONJU/1673.**

3. THAT the 1st Defendant herein has unlawfully interfered with the legally demarcated boundary on plot No. NYAMBENE/KATHIRI/18, gone to an extent of erecting a permanent structure thus interfering with the plaintiff's continued occupation and/or possession and operation on the said parcel.

4. THAT the 2nd Defendant herein has illegally occupied and/or possessed all that parcel known as NYAMBENE/MULIKA/6944 thus interfering with the Plaintiff's continued occupation, access and/or possession on the said parcel.

5. THAT on the 19th day of January, 2013 the Plaintiff did a search on Plot No. 6944 (also referred to as NYAMBENE/MULIKA/6944) at the Ministry of Lands and the said plot was confirmed to be in the name of ELIUS KAITHIA CHOKERA, the Plaintiff's late husband.

6. THAT on the 22nd day of September, 2014 the 2nd Defendant was summoned to appear before the O.C.S Mikinduri Police Station vide OB No. 22/18/09/2014 which summons the 2nd Defendant disobeyed and/or defied and declined to appear before the Officer Commanding Station (O.C.S).

7. THAT the Demarcation Officer in charge of Antuamburi Adjudication Section summoned the 2nd Defendant and others on the 11th day of March, 2015 to appear before the said officer to shed light on claims of interfering with demarcated land boundary which the 2nd respondent disobeyed and/or defied the said summons.

8. THAT on the 21st day of July, 2015 the 1st Defendant was summoned to appear before the O..S Mikinduri Police Station on charges of interfering with demarcated land boundary which the 1st Defendant failed to appear before the O.C.S Mikinduri Police Station.

9. THAT the 1st and 2nd Defendant's actions are contrary to the law and the Plaintiff has a prima facie case against the 1st and 2nd Defendants.

4. The application was slated to be heard interpartes on 10/05/2016. On this day, Advocate Calvin Otieno, for the Plaintiff told the Court that he was not ready to proceed with the intended hearing because he had discovered that his client before she filed this suit, had not obtained the Consent of the District Land Adjudication Officer. He proceeded to make an oral application that the Court do proceed to waive the necessity of the apposite Consent. When the Court advised him to file and serve a formal application, he told the Court that he wished to withdraw the entire suit.

5. Mr. Ashava for the 1st respondent told the Court that he was ready to proceed and that he had filed a Notice of Preliminary Objection on a Point of Law to the effect that the application was hopelessly misconceived, frivolous, totally devoid of merit and mala fides for the reason, inter alia, that the application was fatally defective and hence an abuse of the Court process and that it should be struck out with costs to the respondent.

6. Mr. Ringera, for the 2nd Defendant, told the Court that he had filed grounds of opposition in the following terms:-

1. The Plaintiff has no locus standi to bring this suit and the application in respect of property admittedly registered in the name of her deceased husband in the absence of letters of administration of his estate.

2. The suit is incompetent as the requisite Consent to the institution of the suit has not been obtained.

3. The Plaintiff's claim is directed against Land registered in the name of a deceased person.

Mr. Ringera, however, intimated that he was not opposed to the withdrawal of the suit by the Plaintiff as long as Costs were awarded to the 2nd Defendant.

Eventually, the parties proffered a Consent in the following words:-

“By Consent of Advocates for Plaintiff and Defendants, the matter be hereby marked as withdrawn with costs to the Defendants.”

7. The Requirement that the Consent of the Adjudication Officer should be obtained before a suit is instituted in Court is contained in Section 30 of the Land Adjudication Act. It states as follows:-

“ Section 30(1): Except with the Consent in writing of the Adjudication Officer, no person shall institute, and no Court shall entertain, any Civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that Adjudication Section has become final in all respects Under Section 29 (3) of this Act.”

8. I opine that this Court's registry and this Court should not have entertained this suit from the word go. Entertaining suits where apposite Consents have not been given is clearly against written law and not only promotes administrative indolence and impunity but also ultimately and illegitimately ends up in clogging up our already veritably stressed judicial system.

9. It is pellucid that withdrawal of the suit can not cure the lack of the requisite Consent. I find that this suit is not properly in Court. It merits dismissal.

10. In the Circumstances, **this suit is dismissed. Costs are awarded to the Defendants .**

11. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26TH DAY OF MAY, 2016 IN THE PRESENCE OF:

Cc: Lilian/Daniel

Ringera present for 2nd Defendant

Ashava present for 1st Defendant

D.J. Mbaya h/b Otieno for Plaintiff

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P.M. NJOROGI

JUDGE