



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CIVIL CASE NO. 5 OF 2009**

1. WAMBUI WAGACHA  
2. MERCY NJERI NGOIMA ..... PLAINTIFF/RESPONDENT

VERSUS

DOMINIC KINYA NGABA ..... DEFENDANT

SARAH WANJIKU KINYA ..... INTERESTED PARTY/APPLICANT

**R U L I N G**

1. The application dated 20/9/2013 is brought under **order 51 rule 1** of the **Civil Procedure Rules, Section 3A, 1A and 1B** of the **Civil Procedure Act** and all enabling provisions of the law.
2. The application presently seeks the following orders.
2. **“THAT** Sarah Wanjiku Kinya **be enjoined in this suit as an interested Party.**
4. **THAT** the orders of this Honourable Court made on 4<sup>th</sup> September 2013 be set aside or varied.
5. **THAT** the costs of this application be provided for.”
3. The background to the application is that the ruling herein dated 4<sup>th</sup> September 2013 allowed the Plaintiffs’/Respondents’ application for summary judgment against the Defendant. The judgment is for orders of eviction against the Defendant and an order of permanent injunction prohibiting the Defendant by himself, servants and or agents or any other person claiming under him from trespassing, encroaching or in any other way interfering with the Plaintiff’s parcels of land number **20604/69** and **20604/70 Mavoko Municipality.**
4. The Applicant herein, **Sarah Wanjiku Kinya** in her supporting affidavit and supplementary affidavit has stated that she is a wife to the Defendant herein. It is the Applicant’s averment that she was not aware of the suit herein until the entry of the summary judgment was brought to her attention. The Applicant has further stated that together with the Defendant they constructed their matrimonial home on the suit premises. That the Defendant deserted the matrimonial home and no longer resides at the suit premises. That together with the children, she is the one who resides at the suit premises and therefore she is the one to be affected if the orders of eviction are executed.
5. The Applicant has made a proposal to have two plots **LR No. 20604/71** and **No. 20604/72** which are in the same locality transferred to the Respondents in exchange of the suit property. The Applicant further undertakes to pay stamp duty and other costs related to the transfer. According to the Applicant, once the land issue is sorted out, the Respondents can then pursue the issue of

- damages for trespass with the Defendant.
6. The application is opposed. According to the replying affidavit, the Applicant lacks *locus standi* to seek that the orders herein be set aside or varied. That the Applicant has all along been aware of the dispute involving the suit property. That the Applicant's husband went ahead with impunity and constructed on the suit property although he had been informed that he was constructing on the Respondents' land. The Respondents blame the Applicant and her husband for not pursuing the settlement of the matter amicably.
  7. The application was canvassed by way of oral submissions which I have duly considered.
  8. The Applicant seeks orders for setting aside or variation of the orders herein. However, nothing new has cropped up. The suit property is registered in the Respondents' names. The question of matrimonial property cannot arise when the Applicant's husband is not the owner of the property in question.
  9. The Applicant admits that the suit land is registered in the Respondents' names. She offers to transfer some adjacent property to the Respondents in exchange of the suit property. She also offers to address the question of trespass. That however requires the blessings of the Respondents.
  10. With the foregoing, I find no merits in the application and dismiss the same with costs.

.....

**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Machakos this 24<sup>th</sup> day of February 2015.

.....

**B. THURANIRA JADEN**

**JUDGE**