



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISCELLANEOUS APPLICATION NO. 221 OF 2014

MUTITU RURAYA.....APPLICANT

VERSUS

WILSON MUGWE WERU.....RESPONDENT

RULING

1. The Application before me is dated the 14th April, 2010. It is brought by the Applicant Mutitu Ruraya under the provisions of Section 3A of the Civil Procedure Act, and seeks an order of preservation of the suit property Nyandarua/Kanyagia/596 and 597 which are subdivisions from the original title No. Nyandarua/Kanyagia/13 pending the reconstruction of a court file in Nakuru High Court Civil Case No. 188 of 1974 which file is alleged to have gone missing from the courts civil registry.

2. On the 16th April, 2010 the High Court (*Emukule J*) granted prayers 1, 2, 3 & 4 and directed the Deputy Registrar of the court to ascertain from the courts archives whether the original file is missing or destroyed pending inter-partes hearing of the application and ordered that the parties do file a list of documents as they deem appropriate to facilitate the reconstruction of the court file.

The court thereafter gave leave for the reconstruction of the court file. The Applicant and the Respondent have filed their separate lists of documents. The Applicants list of documents were filed on the 20th August, 2014 and has only 7 documents while the Respondents list filed on the 28th March, 2014 has 21 documents.

For avoidance of doubt and clarification, the Applicant hereof was the Plaintiff while the Respondent was the Defendant in the suit, HCCC No. 188 of 1974, the missing file.

3. When parties attended court for the hearing of the application and mainly on the reconstruction of the court file on the 21st January, 2015, they could not agree on the documents that each filed. The only document agreed upon by both parties was the plaint dated 8th October 1974 and filed on the same day. This is document No. 1 on the Respondents list of documents. The Applicant did not have a copy of the plaint but agreed to have the plaint filed as stated above and adopted. Each party's Advocate gave a chronology of events in the main 1974 case and others that were subsequently filed by and between the parties. Of special interest was the ruling of this court on the 5th February 2010 by W. Ouko Judge, (*as he then was*). Each party accused the other and allegations of forgery and causing the file to “disappear”. At the end of the day, this court was left from where it started. No documents save for the plaint have been agreed upon.

4. There has been numerous orders, rulings and judgments apparently issued by different judges of this court in the numerous court actions touching on this matter. However their authenticity is challenged by the Respondents and the Applicants hence the non admission of the documents due to the obvious mistrust and apparent mischief by all or either of the parties. These are Succession No. 563 of 1983 Nyahururu Land Case No. 16 of 2009, HCCC No. 188 of 1974 among others between the parties and involving the same subject matter, the suit property.

5. Having so stated, I find that this court may not be able to resolve the issue of the documents as two sets have been put forward. It is my view that the parties do hold a conference with the Deputy Registrar of this court on a date to be agreed, where, using the court registers, where orders rulings and judgments are recorded for the period October 1974 to date, try to find out if the rulings, orders and judgments set out by the two opposing parties were actually issued by officers of this court. It is also instructive for the parties, during the conference to try and find out which of the orders, rulings and judgments are genuine, as allegations of forgery and falsification of documents have been alleged. That way, a list of agreed documents to form the skeleton court file may be reached.

10. Let the parties appear before the Deputy Registrar on a mention date to be taken at the Registry to take a conference date for the above purpose. Thereafter, the parties shall approach the court by a mention for further directions.

It is so ordered.

Dated, signed and delivered at Nakuru this 28th day of May 2015.

JANET MULWA

JUDGE

In the presence of:

Ngamate holding brief for Waiganjo - for the Defendant/Respondent

Ms. Gachanja holding brief for Wahome - for Plaintiff/Applicant

Linah - Court clerk