



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

PETITION NO 17 OF 2020

IN THE MATTER OF: ARTICLE 22(1) OF THE CONSTITUTION OF KENYA

AND

CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS PURSUANT TO ARTICLE 28,

40, 43, 47, 64 OF THE CONSTITUTION OF KENYA

AND

SECTIONS 43 & 44 OF THE LAND ACT, 2012 LAWS OF KENYA

AND

SECTIONS 24, 25, 29, 30, 34, 37, 42 OF THE LAND REGISTRATION ACT, 2012

AND

THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL

FREEDOMS AND ENFORCEMENT OF THE CONSTITUTION)

PRACTICE AND PROCEDURE RULES, 2012

BETWEEN

MORRISON M. MURIUKI.....APPLICANT/PETITIONER

AND

LAWRENCE KARUGU KIMANI.....1ST RESPONDENT

GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED.....2ND RESPONDENT

RULING / DIRECTIONS

1. This Ruling is in respect of Notice of Motion filed on 13/5/2020 by the Petitioner/Applicant. In the Motion the Petitioner sought the following orders:-

“THAT in the interim and pending the hearing of this Petition interpartes, this Honourable Court be and is hereby pleased to issue a conservatory order prohibiting/restraining the Respondents, their agents, employees, servants, accomplices and/or any other person from evicting and/or interfering with the possession and quiet enjoyment of the properties known as RUIRU/KIU BLOCK 2/8008; RUIRU/KIU BLOCK 2/8009; RUIRU/KIU BLOCK 2/8010; RUIRU/KIU BLOCK 2/8011; RUIRU/KIU BLOCK 2/8012; RUIRU/KIU BLOCK 2/8013; RUIRU/KIU BLOCK 2/8014; RUIRU/KIU BLOCK 2/8015;

2. The application is premised on the grounds annexed thereto and the Supporting Affidavit of the Applicant sworn on 13/5/2020. He avers that he acquired the suit land Ruiru/Kiu Block 2/3666 by purchase from one Paul Kariuki Chege in 2002 and for twenty seven (27) years he has continued to own the land until 2011 when he subdivided into plots and sold to 14 purchasers who hold titles to the resultant subdivisions.

3. That all was quiet until the said purchasers were served with a notice of eviction by the Respondents hence the filing of the application and the Petition. The 1st Respondent vide his Replying Affidavit sworn on 29/6/2020 opposed the application and contended that he is the owner of the suit land having acquired from 2nd Respondent on account of his membership in Githunguri Constituency Ranching Company Limited (refer to Share Certificate No. 5566 and Ballot No. 1601).

4. It is his case that the Petitioner acquired the suit land fraudulently from **Paul Kariuki Chege**. That he has never parted with ownership of the suit land either to Chege or any other person.

5. Similarly, the 2nd Respondent opposed the application through the Replying Affidavit of **John Maina Mburu** who introduced himself as a Director/Chairman of the 2nd Respondent. He avowed that the suit land belongs to the 1st Respondent.

6. On the 1/7/2020 the Honourable Court in the presence of Learned Counsels representing the parties directed that the application dated 13/5/2020 be canvassed by way of written submissions. The parties were to file written submissions within 14 days. In addition the interim orders hitherto issued were extended.

7. On 30/11/2020 the Court observed that the parties had not complied with its earlier directions and dismissed the application as follows:-

“a. There are no written submissions as earlier directed by the Court.

b. The Notice of Motion dated 13/5/2020 has not been prosecuted and the same is dismissed with costs in the cause.

c. The Respondent has 21 days to file response to the main Petition with correspondence leave to Petitioner to respond if need be.

d. Mention on 12/4/2021 to take directions on how to proceed with main Petition.

e. Mention Notices and today’s directions to be served on the Petitioner by Mr. Kanyi.

8. Come the 12/4/2021 in the presence of the 2nd Respondent’s Learned Counsel the Court issued a hearing date for the Petition on 2/6/2021. On the 2/6/2021 the parties addressed the Court in respect of the Notice of Motion dated the 13/5/2020 and sought time to file written submissions together with Replying Affidavits notwithstanding the record showing that the said Notice of Motion stood dismissed.

9. In view of the dismissal orders issued by the Court on 30/11/2020 it is my view that there is no valid Motion on record for which to render a Ruling. There is no evidence that the said orders have been varied, set aside and or appealed.

10. In the end I hold and I find that the Notice of Motion dated 13/5/2020 stands dismissed.

11. The Petitioner is at liberty to expeditiously fix the Petition for hearing at the earliest.

12. Orders accordingly.

DELIVERED, DATED AND SIGNED AT THIKA THIS 24TH DAY OF MARCH 2022 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered online in the presence of:

Muchiri holding brief for Omar for Petitioner/Applicant

Kinyua holding brief for Wangui Kuria for 1st Respondent

Kanyi for 2nd Respondent

Court Assistant - Phyllis