



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MISC. APPLICATION NO. 54 OF 2013

KINGORI MUNAKU..... APPLICANT

VERSUS

- 1. ISAAC MWANGI KINGORI**
- 2. DAVID WAWERU KINGORI**
- 3. PETER WANJOHI KINGORI..RESPONDENTS**

R U L I N G

1. The applicant herein Kingori Munaku is father to the three respondents namely Isaac Mwangi Kingori, David Waweru Kingori and Peter Wanjohi Kingori.
2. The applicant filed an originating summons dated 4/9/2014 in which he sought an order of the court that the cautions lodged on title Nos Sinyerere/Sitatunga Block 1/Mukuyu/395 and 396 be removed forthwith and that the respondents do meet the costs of this application.
3. The three respondents caused cautions to be registered against the two titles. The respondents caused the cautions to be registered claiming that they have beneficial interest in the two properties.
4. The three respondents were duly served but it is only the second respondent who filed a replying affidavit in opposition to the originating summons. The second respondent did not indicate whether he was doing so on behalf of the two other respondents.
5. In the originating summons, the applicant contends that he has two wives. That he has always wanted to distribute his two plots equally among his two wives but that the respondents who are children from his first wife have been opposed to his idea. The respondents have even gone ahead to hide the original titles to the properties forcing him to apply to be given duplicates thereof on account that the titles are lost.
6. The applicant further contends that the respondents have caused cautions to be registered on the two properties. He therefore prays for an order for removal of the cautions arguing that they were registered without any proper basis.
7. In his replying affidavit sworn on 20th September, 2013, the second respondent contends that the two properties were jointly bought by the applicant and his late mother Grace Njeri Kingori and were only registered in the applicant's name in trust for the family. The second respondent further contends that the applicant has been ailing and that some people are taking advantage of his condition to mislead him into selling off family property.
8. The second respondent further contends that the titles to the properties are being held as security for settlement of Kshs.600,000/= loan borrowed by the family to meet the applicant's medical needs.
9. I have considered the applicant's originating summons as well as the replying affidavit by the second respondent. Title No. Sinyerere/Sitatunga Block 1/Mukuyu/396 was cautioned by the first respondent only. Title No. Sinyerere/Sitatunga Block 1/395 was cautioned by the three respondents. I must now decide on

- whether the cautions lodged against the two titles should be removed. The Land Registrar Kitale issued a notice to the first respondent asking him to show cause why the caution should not be removed within 30 days. The notice was dated 17/7/2013. It is not known what became of the notice as the first respondent did not respond to the application for its removal.
10. The two properties are registered in the name of the applicant. The applicant has deponed that he is over 80 years old and he would like to subdivide his properties and give each of his wives a share. He is unable to do so. He (applicant) contends that respondents want him to give the land to his sons instead of his wives. I do not think there is anything wrong in the applicant seeking to give land to his wives rather than to his sons. The applicant is a kikuyu and there is nothing wrong in Kikuyu customs for a man to give land to his wives who will in turn share their respective portions to their sons. This custom is not repugnant to justice and morality.
 11. The applicant is aging and he would like to see his assets shared out. He should not be prevented by his sons from doing so. There is an allegation by the second respondent that his father (the applicant) is being misled to sell his land. There is no evidence in form of affidavits shown to support his allegations. There was also an allegation that the titles to the properties are held as security for a loan of 600,000/= which went to the treatment of the applicant. Again there is nothing to prove that the title documents are held by any institution or individual as security for a loan advanced.
 12. The second respondent has merely stated that the properties were jointly bought by his late mother and the applicant. Nothing has been put forward to prove this allegation. The respondents have not only cautioned the two properties. They have also cautioned two others held by the applicant. All the three respondents are from the family of the first wife of the applicant. The respondents are not mentioning the position of the second family of the applicant.
 13. The respondents should not be allowed to stall the good intentions of their father. I find that the cautions lodged against the two titles are without basis. The two cautions are hereby ordered removed forthwith. The result of this is that the applicant's originating summons succeeds. I shall not make any order as to costs given that the parties herein are related.

It is so ordered.

Dated, signed and delivered at Kitale on this 8th day of April, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Bundi for Mr Nyamu for applicant. Court Clerk – Kassachoon.

E. OBAGA,

JUDGE

8/4/2014