



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ELC SUIT NO. 100 OF 2009 (OS)

MARTIN MUGAMBI.....1ST PLAINTIFF

AGNES MWIMBI.....2ND PLAINTIFF

VERSUS

NJERU NYAGA alias NDURURU NYAGA.....DEFENDANT

R U L I N G

The application herein dated 15th January, 2013 seeks orders:

1. **That in the first instance matter be certified urgent and Court dispense with service.**
2. **That Court do issue order of inhibition to stop the registration of any dealings with respect to parcels NO.KARINGANI/NDAGANI/4204, 4205, 4206, 4207 and 4208 until further orders of the Court or until suit herein is heard and determined.**
3. **That Court to issue orders of injunction to restrain the defendant's agents, SERVANT AS AGENT FROM evicting Applicants or transfer, alienate whatsoever interfere with suit herein(sic) is heard and determined.**
4. **That costs be provided.**

The application was predicated upon the following grounds:

(a) **The subject herein is KARINGANI/NDAGANI/294 which the Respondent has sub-divided into KARINGANI/NDAGANI/4204 to 4208 while the matter herein is pending.**

(b) **The respondent is in the process of transferring the new numbers to other people and Plaintiffs and their families might be evicted together and their families(sic) and suit herein be rendered nugatory.**

(c) **Strangers are putting beacons to the new sub-division and we are apprehensive he may transfer and we be evicted.**

The application was supported by the Supporting Affidavit of AGNES MWIMBI. It was brought to Court by way of a Certificate of Urgency and was heard ex-parte on 15.1.2013 when no interim orders were granted. However, on 22.1.2013 the parties by Consent agreed to have the Status Quo maintained and this Consent was adopted as an order of the Court. On 11.2.2013, the parties agreed to dispose of the application by way of written submissions.

In their submissions, the plaintiffs argued that the orders prayed for are deserved as their main suit is by way of Originating summons claiming 2 acres of land from Parcel No. KARINGANI/NDAGANI/294 which they claim to have occupied since 1963. As the defendant had sub-divided the Original parcel of land into Parcel Nos.4204, 4205, 4206 4207 and 4208, they were concerned that they would be disposed of and their suit rendered nugatory. Inter alia, they argued that technicalities such as Res Judicata put forth by the respondent would be countered by invocation of Section 19(2) of the Environment and Land Court (ELC) Act which enjoined the court to do justice without being bound by the procedure laid down in the Civil Procedure Act. In view of the fact claimed by them that they had occupied the suit land since 1963, they would suffer irreparable damage and for that reason the balance of convenience should tilt in their favour. I wish to point out that Section 19(2) of the ELC was amended to require the Court to be bound by the requirements of the Civil Procedure Act.

The Respondent in his submissions generally sought to controvert the submissions of the Plaintiffs. He explained that he sub-divided Land Parcel No. KARINGANI/NDAGANI/294 into land parcels KARINGANI/NDAGANI/4204-4207 and 9554-9564 so that he could share them out to his children and other deserving members of his family. He stated that the plaintiffs lived on separate parcels of land and not on the suit land.

Among other things, he stated that there was Meru HCCC no.127 of 1996 which was dismissed on 2nd July, 2009 for want of prosecution. He also submitted that the plaintiffs did not satisfy the principles to be considered for grant of an injunction as set out in the Case of Giella Vs. Cassman Brown & Co. Ltd as re-emphasized in the case of East Africa Development Bank Vs Hyudai Motors Kenya Ltd, Civil Appeal No. 194 of 2004. He also claimed that as the original parcel of land No. KARINGANI/NDAGANI/294 did not exist, the Court could not grant the prayers sought in the application as they would be in vain.

I do not see the need to lay out all the arguments advanced by the parties. Many of them can only be properly ventilated at the hearing of the main suit. At this stage of the proceedings, care must be taken not to decide on issues which need to be determined at the conclusion of the main suit.

There is no dispute that the plaintiffs and the defendant are relatives. If the suit land is family land as suggested by the pleadings, both the plaintiffs and the defendant have sentimental attachment to the suit land which would be incapable of compensation in monetary terms. Issues such as the claim, inter alia, that the suit may be Res Judicata are best canvassed at the hearing of the main suit. I also do take note of the fact that the parties had, by consent, agreed to maintain the Status Quo pending hearing and determination of this application. I also note that the suit was filed in 2009.

I have looked at the averments of the parties relating to this application and considered their submissions. I find that the applicants deserve the orders sought in their application dated 15th January, 2013 and do issue an order of inhibition to stop the registration of any dealings with respect to parcels No. KARINGANI/NDAGANI/4204, 4205, 4206, 4207 AND 4208 until this suit is heard and determined. Should Parcel No. KARINGANI/NDAGANI/4208 not be part of the original parcel of land KARINGANI/NDAGANI/294, then it should not be affected by this order.

In the Interest of Justice, I invoke the provisions of Section 63 of the Civil Procedure Act to issue an order of inhibition to stop the registration of any dealings with respect to Parcels No. KARINGANI/NDAGANI/9554, 9555, 9556, 9557, 9558, 9559, 9560, 9561, 9562, 9563, 9564 and 9565 which the defendant has claimed were sub-divided from the original parcel of land No.

KARINGANI/NDAGANI/294, until the hearing and determination of this suit.

For avoidance of doubt, Prayer 3 of the application is granted pending the hearing and determination of this suit.

Costs shall be in the cause.

It is so ordered.

DELIVERED AND SIGNED IN OPEN COURT AT MERU THIS 11TH DAY OF JUNE, 2013 IN THE PRESENCE OF:

Cc Daniel

Mutwiri h/b Joe Kathungu for defendant

Charles Kariuki for Plaintiff absent

P. M. NJOROGE

JUDGE