



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC NO. 7 OF 2013

SABASTIANO NJOGU NJAGI .....1<sup>ST</sup> PLAINTIFF/APPLICANT

CATHERINE WANJIRU NJOGU .....2<sup>ND</sup> PLAINTIFF/APPLICANT

VERSUS

JANEFFER WAKUTHII MUNYI .....1<sup>ST</sup> DEFENDANT/RESPONDENT

TERESSA WAMBUI MURIITHI .....2<sup>ND</sup> DEFENDANT/RESPONDENT

JAMES WAHAKI .....3<sup>RD</sup> DEFENDANT/RESPONDENT

RULING

The plaintiffs/applicants filed this suit against the defendants/respondents on 4/4/2012 seeking a prohibitory order in respect of two parcels of land being NGARIAMA/NGIRIAMBUR/3869 and NGARIAMA/NGIRIAMBUR/925 and also an order directed at the Kirinyaga District Lands Registrar to revert the new numbers to NGARIAMA/NGIRIAMBUR/925.

Simultaneous with that plaint, the plaintiff/applicants also filed an application seeking a temporarily inhibition against the said two parcels of land and also an order that the Land Registrar cancels the new numbers NGARIAMA/NGIRIAMBUR/4549 and 4551 and revert back to the original number NGARIAMA/NGIRIAMBUR/925. The application is supported by the affidavit of the 2<sup>nd</sup> plaintiff/applicant.

The application was opposed and the defendants/respondents filed a replying affidavit.

The said application is the subject of this ruling and it was canvassed orally before me on 17/5/2013 with Mr. Mwai appearing for the defendants/respondents and the 2<sup>nd</sup> plaintiff/applicant representing the 1<sup>st</sup> plaintiff/applicant.

I have considered the said application as well as the affidavits and annexures. From the evidence on record, I notice that parcel of land No. NGARIAMA/NGIRIAMBUR/3869 is registered in the names of the three defendants/respondents while parcel of land No. NGARIAMA/NGIRIAMBUR/925 is registered in the names of the 1<sup>st</sup> plaintiff/applicant.

With regard to parcel No. NGARIAMA/NGIRIABUR/3869, there is nothing in the pleadings to suggest that the said land is being held in trust by the defendants/respondents. Therefore, the registration of the said parcel in their names gives them all the rights and privileges provided for under **Section 24 and 28**

of the Land Registration Act or Section 28 of the now repealed Registered Land Act under which the title was issued. No reason have been placed before me to warrant issuing the orders of prohibition with respect to L.R No. NGARIAMA/NGIRIAMBUR/3869.

And with respect to NGARIAMA/NGIRIAMBUR/925, the said parcel of land is registered on the names of the 1<sup>st</sup> plaintiff/applicant herein and I believe the inclusion of this parcel was an error as one cannot seek a prohibition against one's own land.

The other remedy that the land register be cancelled and parcel numbers NGARIAMA/NGIRIAMBUR/4549 and 4551 do revert to NGARIAMA/NGIRIAMBUR/925 is a remedy that can only be granted after full trial. In any case, it is not indicated when land number NGARIAMA/NGIRIAMBUR/925 was sub-divided into 4549 and 4551 and neither has the Court been shown the documents of ownership of NGARIAMA/NGIRIAMBUR/4549 and 4551. Indeed it was difficult to follow the applicant's arguments perhaps because she conducted her application in person. Indeed the application itself was brought under the wrong provision of the law but that issue was not taken up by Mr. Mwai and the Court decided to hear the application on merit.

Having considered the application, I find that it lacks merit. I accordingly dismiss it with no order as to costs.

B.N. OLAO

JUDGE

10/6/2013

10/6/2013

Before B.N. OLAO - JUDGE

CC – Muriithi

No appearance for Plaintiff

Ms Thungu for Mwai for Defendant present

COURT: Ruling delivered this 10<sup>th</sup> day of June, 2013 in open Court.

B.N. OLAO

JUDGE

10/6/2013