



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT & LAND COURT
CIVIL APPEAL NO.110 OF 2008

LAWRENCE KAIRU NYAMBURA.....APPELLANT

VERSUS

MOSES KINYURU GATHOGO.....RESPONDENT

RULING

The application before court is dated 16th January 2012 and supported by the affidavit of Symon Kabugi Kinyuru. The applicant is seeking orders that he be made a party to this case in substitution of the deceased (Respondent and decree holder) Moses Kinyuru Gathogo and that the Honourable Court be pleased to join the Land Registrar Nyeri County as a respondent. Furthermore that the Honourable Court be pleased to compel the Land Registrar to visit the suit land and fix the boundaries in question within the next 14 days of this order and the respondent be restricted by permanent injunction from wasting, damaging, alienating and or leasing land parcel No.Nyeri/Watuka/738 until the boundaries are fixed and be ordered to remove the persons he has leased to the above mentioned land forthwith and he be ordered to compensate the applicant for the costs of fixing the boundary and lastly that the Honorable Court be pleased to revisit the issue on costs of this appeal and of the courts below and that costs of this application be provided for.

Prayer No.1 of the Notice of Motion was earlier allowed by this court as the matter had proceeded on appeal and judgment delivered. What is pending is execution of the decision of the court dated 29th May 2012. The import of the decision was an order of the court that:

1. **The appeal had no merit and was dismissed with costs.**
- 2.
3. **That the Provincial Appeals' Committee's decision was upheld.**
- 4.
5. **That Nyeri District Registrar was to visit the site and settle the boundary dispute of land parcel No.NYERI/WATUKA/738 and NYERI/WATUKA/739.**
- 6.
7. **That each party meets his or her own costs.**
- 8.

The Land Registrar was supposed to visit the site and settle the boundary dispute of Land Parcel No.NYERI/WATUKA/738 and NYERI/WATUKA/739. Upon the courts intervention the Land Registrar had agreed to visit the site on the **1/8/2013** and comply with the court order but surprisingly he has not done so and therefore allowing the respondent to benefit unfairly.

This court has been requested to issue a permanent injunction against the respondent from wasting, damaging, alienating and/or leasing the land No.**NYERI/WATUKA/738** until the boundaries are fixed and he be ordered to remove the persons he has leased the above mentioned land forthwith. The dispute before court is in respect of a boundary which dispute has already been determined by an order of the Provincial Appeals Committee. The court has already directed the Land Registrar to visit the site and determine the boundary as ordered by the committee.

The court has read the application, the supporting affidavit, replying affidavit, grounds of opposition, applicants supplementary affidavit and the reply to supplementary affidavit and find the application merited and orders that the respondent be restricted by a permanent injunction from wasting, damaging, alienating and/or leasing the land parcel **No.Nyeri/Watuka/738** until the boundaries are fixed and should remove the persons he has leased on the said parcel of land until the boundary dispute is settled between **Nyeri/Watuka/738** and **Nyeri/Watuka/739** in accordance with the Provincial Appeals Committees' decision. The court finds that the issues of letters of administration does not affect execution of a decree and therefore the applicant is properly before court.

Moreover ,**Order 23 rule 10 of the Civil Procedure Rules** provides that nothing in rules 3, 4 and 7 shall apply to proceedings in execution of decree or order. The respondent is trying to hide in the provisions to avoid compliance with a court order or decree .The upshot of the above is that the application is allowed in the following terms:-

1. The respondent be **AND IS HEREBY** restricted by a permanent injunction from wasting, damaging, alienating and/or leasing the land parcel **No.Nyeri/Watuka/738** until the boundaries are fixed
2. The respondent Lawrence Kairu Nyambura is **HEREBY ORDERED to** remove the persons he has leased on the suit parcels of land until the boundary between **Nyeri/Watuka/738** and **Nyeri/Watuka/739** is settled in accordance with the Provincial Appeals Committees decision.
3. Cost of the application to the applicant

Orders accordingly

Dated at Nyeri this 25th Day of September 2013.

Antony Ombwayo

Judge