



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 269 OF 2010

JOHN SIMON NJENGA.....PLAINTIFF

VERSUS

TABITHA NYAWIRA WAMATHAI.....DEFENDANT

RULING

The Plaintiff filed a Notice of Motion dated 18th December 2012 seeking that this court amends its orders granted on 18th July 2012 to include the following parcels of land, namely LR. Ruiru/East Block 1 (Githunguri), 3416, 3417, 3418, 3419, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427, 3428 and 3429. The said Notice of Motion is brought under the provisions of sections 3, 3A, 99 and 100 of the Civil Procedure Act.

The grounds for the application are detailed out in a supporting affidavit sworn on the same date by the Plaintiff, and are that the property known as Ruiru/East Block 1 (Githunguri) 1423 was sub-divided to create parcel numbers 3372-3383, which were later amalgamated to create Ruiru/East Block 1 Githunguri 3413, which has also been sub-divided to create parcel numbers Ruiru/East Block 1 Githunguri 3416 – 3429. Further, that the Defendant is likely to further sub-divide the said land to bring in new numbers to defeat the Court orders, and that all the new numbers are still registered in his name.

The Plaintiff further stated that on 18th July 2012 this Court ordered as follows:

“I hereby Order that the status quo be maintained as follows:- The Defendant, her servants, agents, licencees are restrained from further sub-dividing, selling, disposing of, transferring or alienating in any manner whatsoever whether by grant, sale or encumbrances the property originally known as Ruiru/East Block 1 (Githunguri) 1423, and/or any of the sub-divisions thereof namely; LR, Ruiru/East Block 1/3372, 3373, 3374, 3375, 3376, 3377, 3378, 3379, 3380, 3381, 3382 and 3383 and from interfering with the Plaintiff’s quiet enjoyment of the same pending the hearing and determination of the Plaintiff’s Suit or until further orders.”

Further, that he duly extracted the said order and presented it for registration at the Thika Lands Office on 26th September 2012 as booking number 859/9/12. However that his application was rejected with the following remarks:

“I am unable to register the Court order because the new parcels registers 3372 – 3383 are closed

on combination and new title register 3413 registered on 16/4/09, which is also closed on sub-division and new parcel number 3416-3429 registered.”

The Plaintiff further stated that he is unable to register the said order unless the Court makes the necessary amendments to include the new numbers, namely land parcel numbers Ruiru/East Ruiru block 1 (Githunguri) 3416-3429. He attached a copy of the court order and his application for registration.

The Plaintiff's counsel in submissions dated 16th September 2013 argued that the Plaintiff is not seeking fresh prayers, and that amendment of his Plaintiff is not necessary as he still holds his valid title to the suit property. Further, that section 100 of the Civil Procedure Act gives powers to this Court to amend any defect or error in any proceedings in a suit, for the purpose of determining the real issue or question in a suit.

The Defendant opposed the Notice of Motion in Grounds of Opposition dated 11th June 2013 on the grounds that the parcel number which is the main issue in this suit does not exist as described in the Plaintiff, and that without amendment this suit cannot proceed to a full hearing without difficulties. Further, that the subdivisions are in the hands of third parties who have not been enjoined in this suit.

The Defendant's counsel in submissions dated 22nd July 2013 argued that the powers conferred on the court to effect amendments under section 100 of the Civil Procedure Act is to correct any errors or defect in proceedings. Further, that the Plaintiff had not shown any errors made by the court in the proceedings or in its ruling given on 18th July 2012, and should therefore proceed by way of review. The counsel also submitted that the amendments sought by the Plaintiff should be in tandem and consistent with his pleadings. The counsel noted that the injunction orders granted to the Plaintiff had since lapsed under Order 40 Rule 6 of the Civil Procedure Rules.

I have read and carefully considered the pleadings and submissions by the parties to this application. The issue before the court for determination is whether this court can amend its ruling given on 18th July 2012 as sought by the Plaintiff. Section 99 of the Civil Procedure Act states as follows with regard to amendments and corrections of judgments and rulings:

“Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”

It is my view that effecting the amendments sought by the Plaintiff by adding new sub-divisions of parcels of land to the ruling would amount to changing the entire character and purport of the ruling, and would be going beyond correcting clerical or arithmetical mistakes, or errors arising from accidental slip or omission as is intended by section 99 of the Civil Procedure Act.

I have also noted in this regard the Defendant's statement that the subdivisions sought to be included in the amendments have been registered in the name of third parties, and that the Plaintiff did not provide any evidence of his assertion that the sub-divisions are still registered in the Defendant's name. It may thus be necessary to amend the pleadings filed herein to the extent that the orders being sought by the Plaintiff may affect third parties.

It is thus my finding that since the amendment and/or correction sought will substantially vary the ruling by this court, the orders sought cannot be granted and the Plaintiff should proceed to effect the said changes either by way of review of the said ruling or by way of a new application.

The upshot of the foregoing is that the Plaintiff's Notice of Motion dated 18th December 2012 fails, and the Plaintiff shall meet the costs of the said Notice of Motion.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this ____4th____ day of ____December____, 2013.

P. NYAMWEYA

JUDGE