



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 758 OF 2012

**MBURU MWAURA (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF MWAURA WAGONYA “A”(DECEASED)).....PLAINTIFF**

VERSUS

**MARGARET WANJIRU (HOLDING LIFE INTEREST TO THE
ESTATE OF MWAURAWAGONYA“A**

ALIAS BARNABAS MWAURA (DECEASED)1ST DEFENDANT

KAMORI KIBURU.....2ND DEFENDANT

IHUTIA THIN’GA.....3RD DEFENDANT

RULING

The Plaintiff filed an application by way of Notice of Motion dated 26th October 2012, seeking orders of an injunction against the Defendants to restrain them trespassing, carrying out any developments, disposing of, or in any other manner dealing with Title No. Chania/Kanyoni/131 (hereinafter the “suit property”) pending the hearing and determination of this suit. He also sought orders that the Officer Commanding Station Kiambu Police ensures compliance of the order.

The Plaintiff’s grounds for the application are that the 1st Defendant, who holds a life interest in the suit property, has in contravention of court orders transferred the suit property to her name and been issued a certificate of title thereto. Further, that the 1st Defendant has fraudulently sold portions of the suit property to the 2nd and 3rd Defendants who have now embarked on carrying out developments thereon.

The Plaintiff in his supporting affidavit sworn on 26th October 2012 states that he is the administrator of the Estate of Mwaura Wangonya ‘A’ alias Barnabas Mwaura, and that he obtained letters of Administration issued on 16th May, 1988 in Thika RM Succession Cause 136 of 1985, a copy of which he annexed. He stated that there is a suit pending before the High Court namely ELC Suit 328 of 2008 between himself and the 1st Defendant regarding the suit property which belonged to his deceased father, and in which he is challenging the transfer by the 1st Defendant of the title to the said property to her name. The Plaintiff gave a history of the dispute regarding the suit property, including the decision of the court given in Thika Succession Cause No. 136 of 1985 that the 1st Defendant only had a life interest in the suit property. He attached a copy of the judgment.

The Plaintiff further stated that he appealed against the actions of the 1st Defendant in High Court Civil Appeal No. 132 of 1992, in which the court ordered on 10th December, 2002 and 20th April, 2004 respectively that the 1st Defendant's adopted son Ndung'u Mwaura was not a proper beneficiary to the Estate of the deceased Estate of Mwaura Wangonya 'A' alias Barnabas Mwaura. The Plaintiff averred that he was apprehensive that the suit property is in danger of being wasted and/or alienated by the 2nd and 3rd Defendants in connivance with the 1st Defendant.

The Plaintiff's application was opposed by the Defendants. The 1st Defendant in a replying affidavit sworn on 5th December 2012 admits that there is a pending Civil Suit No. ELC 328 of 2008, and stated that the cause of action herein is *subjudice*. She further stated that she acquired title to the suit property upon filing and being given a Grant of Administration intestate of the estate of Ndung'u Mwaura (Deceased). She attached a copy of the certificate of confirmation of grant dated 7th February 2008 issued in Nairobi High Court Succession Cause No. 452 of 2006.

The 2nd Defendant filed a replying affidavit sworn on 6th November 2012, wherein he stated that he bought 1 acre of the suit property from the 1st Defendant by way of a sale agreement dated 20th August 2007. Further, that he took possession of the said one acre upon execution of the sale agreement, and has constructed his residential house and rears livestock thereon. He annexed a copy of the said agreement and photographs of the said land. The 2nd Defendant averred that the effect of the interim orders would be to evict him before the case is heard on merit, that he was bona fide purchaser for value and that the 1st Defendant never informed him of the pending dispute touching on the suit property. Further, that an official search attached to the Plaintiff's supporting affidavit clearly shows the 1st Defendant as the registered proprietors of the property.

The 3rd Defendant filed a replying affidavit sworn on 20th December 2012 in which he stated that he was approached in 2008 by the 1st Defendant, who offered to sell him ½ acre of her land. That he together with his wife Cecilia Wanjiku Ihuthia subsequently entered into a sale agreement with the 1st Defendant for the purchase of the said land on 7th March 2011. Further, that the 1st Defendant confirmed her ownership of the suit property by showing him the original title deed, which showed that she was the registered proprietor of the suit property. The 3rd Defendant further stated that he paid the 1st Defendant Kshs 400,000/= being the entire purchase price, and the 1st Defendant thereupon allowed him to take possession, and undertook to complete the formalities of sub-division.

The 3rd Defendant averred that he was not aware of the pending cases affecting the suit property at the time of purchase, and that he is an innocent bona fide purchaser for value of ½ of an acre of land to be excised out of the suit property, and on which he has since constructed his family home at the cost of Kshs 8,000,000/=:, and has resided thereon since March 2011. He annexed copies of the sale agreement entered into with the 1st Defendant and the 1st Defendant's title to the suit property. He also annexed photographs of the house constructed on the land he purchased from the 1st Defendant.

The parties were directed to file written submissions in which they reiterated the arguments made in their pleadings and which I have considered. I note from the said submissions that the dispute herein arises from the actions of the 1st Defendant allegedly as an administrator of the estate of Ndung'u Mwaura (Deceased), which status is challenged by the Plaintiff as having been given contrary to court orders, and which he argues should be revoked. In particular the Plaintiff argues that the 1st Defendant misled the court in High Court Succession Cause No. 452 of 2006 by concealing material facts when she petitioned for grant for letters of administration for the estate of Ndung'u Mwaura who was her adopted son, and who had already been adjudged to have no inheritance rights with regard to the suit property in Nairobi High Court Civil Appeal No. 132 of 1992.

I also note that the issue of the administration and dealings with the suit property has been the subject of other suits between the Plaintiff and 1st Defendant, arising from this conflicting status of the Plaintiff and

1st Defendant with respect to administration of the suit property. It is my view that this court can only effectively determine the dispute between the parties herein and in the other suits filed by the Plaintiff after a decision as to who the valid administrator of the suit property has been made, and it is finally settled as to who can thereby deal with the said property. This is a decision which can only be made by the Family Division of the High Court or the Court of Appeal as the case may be, and not by this court.

I will therefore decide the Plaintiff's Notice of Motion on the basis of a balance of convenience by providing for the *status quo* to be observed, to allow the Plaintiff and 1st Defendant move the appropriate court to resolve and finally determine the dispute as to the administration of the suit property. In this regard I note that the 2nd and 3rd Defendants bought portions of the suit property from the 1st Defendant and have settled thereon. The title however still appears to be in the name of the 1st Defendant.

I accordingly order as follows:

1. That pending the hearing and determination of the suit filed herein or until further orders, the *status quo* to be maintained by the parties herein with regard to the suit property namely Title No. Chania/Kanyoni/131 shall be as follows:
 - a. The 1st, 2nd, and 3rd Defendants shall not subdivide, sell, transfer, charge or in any manner alienate or dispose of the said property or any part thereof.
 - b. The Plaintiff shall not interfere with the 1st, 2nd, and 3rd Defendants' occupation and possession of the said property or any part thereof.
2. The parties shall be at liberty to apply.
3. The costs of the Plaintiff's Notice of Motion dated 26th October 2012 shall be in the cause

Orders accordingly.

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

P. NYAMWEYA

JUDGE