



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

CIVIL APPEAL NO. 316 OF 2013

JAMES NGARI MUCHIRIAPPELLANT

VERSUS

MORRIS MUTERO KIMOTHO1ST RESPONDENT

WILSON NJAGI MUTHIRU2ND RESPONDENT

RULING

(BEING AN APPEAL FROM JUDGMENT OF THE LEARNED CHIEF MAGISTRATE (HON. J. NG'ENO) DATED 11TH JULY, 2013 IN KERUGOYA S.P.M.C.C NO. 71 OF 2010)

This is in relation to the appellant/applicant's Notice of Motion dated 29th July 2013 and filed herein on the same day seeking that preservative orders be issued preventing any registration of transfer, charge or lease on land parcel No. NGARIAMA/NGIRIAMBU/4014 and NGARIAMA/NGIRIAMBU/4013 until the appeal herein is determined. The application is brought under **Order 42 Rule 6(1) (6) of the Civil Procedure Rules** and **Section 68 of the Land Registration Act** and is supported by the appellant/applicant's affidavit sworn on the same day.

The application is opposed and the 2nd respondent has filed grounds of opposition to the same while the 1st respondent has filed a replying affidavit.

An application under **Order 42 Rule 6 of the Civil Procedure Rules** will only be granted where:-

- a. ***The applicant satisfies the Court that substantial loss may result if the order sought is not granted***
- b. ***The application has been made without un-reasonable delay and***
- c. ***Such security as the Court may order for the due performance of such decree or order as may ultimately be binding on the applicant has been given.***

Submissions have been filed by both parties and I have considered the same.

The ruling sought to be appealed from was delivered on 11th July 2013 and this application was filed on 29th July 2013. Therefore there has been no un-reasonable delay on the part of the applicant.

The applicant has deponed in his supporting affidavit that he will suffer substantial loss as he would be rendered destitute having sold his other land. I am satisfied from the circumstances of this case that the applicant has indeed demonstrated that he stands to suffer substantial loss if this application is not granted.

On the issue of security, the applicant has offered to deposit in Court any security including the title to parcel No. NGARIAMA/NGIRIAMBU/4014. The adequacy of this security has not been questioned and in the circumstances, the applicant has satisfied me that he is deserving of the orders sought in the application dated 29th July 2013. Let the security offered being title to parcel of land No. NGARIAMA/NGIRIAMBU/4014 be deposited with the Deputy Registrar within seven (7) days of this ruling.

B.N. OLAO

JUDGE

3RD DECEMBER, 2013

3/12/2013

Coram

B.N. Olao – Judge

CC – Muriithi

Ms Wangechi for Appellant - present

Ms Kiragu for 1st Respondent – present

Mr. Mugambi for 2nd Respondent – present

COURT: Ruling delivered in open Court this 3rd day of December 2013.

B.N. OLAO

JUDGE

3RD DECEMBER, 2013