



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

Miscellaneous Civil Application 405 of 2007

PETER NYAMU KARAGURI1ST APPLICANT

MUHURI KARAGURI2ND APPLICANT

VERSUS

ATTORNEY GENERAL1ST RESPONDENT

LAND REGISTRAR NYERI.....2ND RESPONDENT

B. W. MWAI3RD RESPONDENT

SIMON KABACHIA KARUGURI4TH RESPONDENT

AMINA JUMA KARANJA6TH RESPONDENT

MUTHONI MWANGI7TH RESPONDENT

RULING

By a notice of motion dated 11th October, 2011 brought under Order 151 Rule 1 of the Civil Procedure Rules and Sections 1A,1B and 3A of the Civil Procedure Act Sylvester Gacheru Mwangi seeks to be enjoined as an interested party in this cause. The main ground in support of the application is that the applicant is the registered holder of L.R. Gikondi/Gikondi/1862 which was hived from L.R No. Gikondi/Gikondi/609 the subject matter of this suit. It is the applicant's case that he purchased his title for valuable consideration without notice of any dispute having conducted an official search in the lands registry. In his supporting affidavit sworn on 11th October, 2011 the applicant avers that sometimes early last year he visited the lands registry at Nyeri with a view to being shown the beacons and that is when he was informed that there was a case in court challenging the validity of the titles excised from the original parcel L.R. No. Gikondi/Gikondi/609. He also averred that he was not aware of any dispute at the time he purchased the parcel of land in question.

In submissions dated 13th December, 2011 the 3rd, 4th and 5th respondents indicated that they were not opposed to the applicant's application. The 1st and 2nd respondents did not put in any reply.

By way of submissions dated 14th December, 2011 and filed in court on the same date the ex-parte applicants (Peter Nyamu Karaguri and Muhuri Karaguri) who are the respondents in respect of this

application strongly opposed the applicant's application. It is the ex parte applicants case that the intended interested party (the applicant herein) is guilty of contempt of court and he cannot be allowed to address the court before he purges the contempt.

I have looked at the court file and find that on 16th April, 2010 the ex-parte applicants filed an application by way of chamber summons seeking leave to commence contempt of court proceedings against the five respondents for **“disobeying the order of the court issued on the 26th day of April, 2007 by Honourable Mr. Justice Emukule.”**

I have perused the statement and verifying affidavit in support of the said contempt of court application. The applicant is not named therein. There is no material placed before the court showing that the applicant was aware of the orders of 26th April, 2007 at the time he purchased L.R. No. Gikondi/Gikondi/1862. From the papers placed before the court, it is clear that the applicant has substantial interest in the outcome of this cause.

I agree with the ex-parte applicant that the application has been brought under an unknown order of the Civil Procedure Rules (Order 151). The interests of justice would however dictate that the mistake on the part of the applicant should be ignored. After all the constitution directs that courts should administer justice **“without undue regard to technicalities” (Article 159 (2) (d)).**

In short thereof the applicant's application dated 11th October, 2011 is allowed with no orders as to costs.

Dated and signed at Nairobi this 19th day of January, 2012.

W.K. KORIR
JUDGE