



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MACHAKOS

Civil Case 25 of 2011

DAMARIS WAMBUIPLAINTIFF

VERSUS

1. CHRISTOPHER CHEGE GICHURU

2. DISTRICT LAND REGISTRAR, KAJIADO DEFENDANTS

RULING

1. By an Application dated **07/07/11** (“*Application*”), the Plaintiff/Applicant, **Damaris Wambui** (“*Applicant*”), has approached the Court seeking, in the main, injunctive relief against the two defendants over the property known as **Kajiado/Olchoro-Onyore/5091** (“*Suit Property*”) pending the hearing and determination of the case. The first Defendant is **Christopher Chege Gichuru** (“*1st Respondent*”). The second Defendant is the **District Land Registrar, Kajiado**.

2. The Application is supported by an Affidavit of the Applicant. The Applicant’s case is that she owns the Suit Property it having been gifted to her by her mother, **Consolata Njeri Mbugua** sometime in **August, 2009**. However, the Applicant’s case goes, the 1st Respondent has in the past, and without lawful justification, placed restrictions on the land. He recently managed to outrightly transfer the land to himself. That transfer, the Applicant maintains, was done fraudulently and with the collusion of the 2nd Defendant since the Applicant is the lawful owner of the Suit Property and had not consented to such transfer.

3. The 1st Respondent’s version of the story is markedly different. That story is told in a Replying affidavit of the 1st Respondent filed in Court on **24/03/2011** together with many annexures thereto. It goes that he bought the Suit Property from **Consolata Njeri Mbugua**, and, over time paid the agreed purchase price. However, with the sole objective of defeating the legitimate interests of the 1st Respondent hence acquired, **Consolata Njeri Mbugua** colluded with the Applicant to have the Suit Property transferred into the Applicant’s name. Aggrieved by this fraud, the 1st Respondent referred the dispute to the Kajiado District Land Disputes Tribunal and obtained a judgment in his favour. That decision of the Tribunal was then filed in the Senior Resident Magistrate’s Court at Kajiado. Judgment was then entered in accordance with the decision of the Tribunal pursuant to section 7(2) of the Land Disputes Tribunal Act. It was a subsequent decree based on that judgment that effected the transfer of land to the 1st Defendant as permitted by law.

4. Faced with the 1st Respondent’s narrative, the Applicant says she was unaware of the Tribunal

proceedings and award. She therefore says that the Tribunal proceedings were done secretly and fraudulently and without her being served. She says she tried, in vain, to get information about the Tribunal case despite her efforts. Hence, it is her position that the transfer effected pursuant to the Tribunal decision is fraudulent and the same should be set aside.

5. I have carefully read through the documents filed in the case as well as the Written Submissions filed on behalf of both counsels. I note that the advocates for the 1st Defendant filed a Notice of Preliminary Objection raising several objections to the suit and application and asking the Court to strike out both. When the Application came up for hearing on **23/11/11**, the parties agreed by consent to argue both the Preliminary Objection and the Application simultaneously and to canvass both by way of written submissions. The parties duly filed their written submissions which I have carefully read.

6. In the end, I have become persuaded that this entire suit cannot stand in the face of the decree issued by the Magistrate's court in Kajiado following the award of the Tribunal. I would concur with Justice Ouko in *Lucia Waithera Maina v James Gakure Kamau* (Nakuru HCCC No. 116B of 2008 (unreported) that once there is a valid case filed at the Land Disputes Tribunal and a valid award rendered, filed in Court and adopted as the judgment of the Court, the only routes open for an aggrieved party to challenge that decision or decree arising therefrom are: first to exhaust the appellate process under the Land Disputes Tribunal Act, or second, to seek *certiorari*, to quash the decision of the Tribunal or otherwise to challenge that decision. One cannot simply ignore the decision or declare it unfair or illegal or worse and file an entirely new suit at the High Court.

7. The danger in allowing a party to entertain a suit such as this one is obvious: there is already a legitimate and valid court order awarding the Suit Property to the 1st Defendant. Indeed, it is pursuant to that order that the 2nd Defendant acted to issue a new title to the 1st Defendant. Yet, the present suit seeks, in essence, a finding that the Suit Property belongs to the Applicant. As in the *Lucia Waithera Maina Case*, the Applicant here has instituted a parallel cause of action which, if successful, would issue a Court order directly contradicting an existing court order. If there ever was an abuse of the process of the Court, we are then, staring at one right on its face. Consequently, this suit is not maintainable. If the Applicant is dissatisfied with the Court orders issued pursuant to the Tribunal award, she must find a way to challenge them in that same cause. It is not open for her to institute an entirely new suit covering exactly the same subject matter.

8. In the circumstances, the Court has no choice but to invoke the provisions of **Order 2, Rule 15(1)** and strike out the entire suit with costs to the 1st Respondent. It, of course, follows that the Application dies with the suit.

DATED, SIGNED and DELIVERED at MACHAKOS this day 15TH day of FEBRUARY 2012.

J.M. NGUGI
JUDGE