



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO. 286 OF 2005**

**JOAN NYOKABI NDUNGU.....PLAINTIFF**

**VERSUS**

**STANLEY MUTIMU NJOGU  
GEORGE NG'ANG'A WANYOIKE.....DEFENDANTS**

**RULING**

**JOAN NYOKABI NDUNGU**, the plaintiff in the matter sued **STANLEY MUTIMU NJOGU** and **GEORGE NG'ANG'A WANYOIKE**, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively. The plaintiff's claim is that she is the registered proprietor of the parcel of land known as **RUIRU EAST BLOCK 5/66** [the suit premises] situated in Kahawa Area, Nairobi.

The plaintiff alleges that sometime in July 2004, she visited the suit land and found someone had put a perimeter fence around the suit premises. She later learnt that her property was purportedly transferred through fraud to the defendants by unknown people. She, therefore, filed this suit seeking for *inter alia* mandatory injunction to restrain the defendants, their agents either by themselves or agents from trespassing or alienating the suit premises. She also sought for an order directing the District Land Registrar, Thika to rectify the register in respect of the suit land by cancelling entries 4, 5, 6 and 7 therein.

At first, interlocutory judgment was entered in favour of the plaintiff on 17<sup>th</sup> July, 2006. The matter even proceeded for formal proof and judgment was delivered on 4<sup>th</sup> March, 2008. However, by a ruling of **Msagha, J** dated 9<sup>th</sup> December, 2010; the default judgment was set aside. In that ruling the Judge noted the following:

***“The 2<sup>nd</sup> defendant therefore should be given an opportunity to canvass those points. I am inclined to allow this application and order that the default judgment shall be and is hereby set aside and the defendant granted leave to file his defence within 14 days from the date hereof. The costs of this application shall be in the cause.”***

After that order was made, three interlocutory applications were filed. In the interest of saving judicial time and to enable parties move on with the substantive matter, I directed those applications should be argued together primarily because the notice of motion dated 13<sup>th</sup> October, 2011, by the 2<sup>nd</sup> defendant seeks for orders that the plaintiff be restrained from interfering with the suit land by way of transferring, charging or constructing. Secondly, the court to stay any registration or transaction in respect of the suit land. This application came up for hearing *ex parte* under certificate of urgency and an interim *ex parte* order was issued on 17<sup>th</sup> October, 2011. The notice of motion dated 27<sup>th</sup> October, 2011, seeks for setting

aside the *exparte* order. In essence, this application can be deemed to be the replying of the one dated 13<sup>th</sup> October, 2011.

Considering what has transpired in this matter, it is in the interest of justice that the issue of ownership of the suit premises be determined after a full trial. The notice of motion dated 28<sup>th</sup> April, 2011, is taken out by *Peter Kungu Wanyoike* who claims that he is holding a power of attorney on behalf of the 2<sup>nd</sup> defendant. He claims that the register of the suit land can be rectified by removing the name of the 2<sup>nd</sup> defendant. With respect to the 2<sup>nd</sup> defendant, that is a matter for trial. There is no short cut; the parties have to adduce evidence to show who is the rightful owner of the suit premises. I, therefore, disallow that notice of motion.

The second notice of motion seeks for restraining orders against the plaintiff. For the same reasons as above, it is only after a full trial that the issue of ownership of the suit premises can be determined. The plaintiff claims she is the registered owner of the title; the only order that renders itself just in the circumstances, is for the maintenance of the status quo in respect of **RUIRU EAST BLOCK 5/66** until the suit is heard and determined. The *exparte* order of injunction issued on 17<sup>th</sup> October, 2011 is hereby vacated.

The parties are directed to prepare the suit for hearing. Costs of this application shall be in the cause.

**Ruling read and signed this 30<sup>th</sup> day of March, 2012.**

**MARTHA KOOME**  
**JUDGE OF APPEAL**

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**Note:**

*This application was heard and concluded on 1<sup>st</sup> December, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed a Judge of the Court of Appeal. I proceed to write and append my signature thereto in my new capacity.*