



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
ENVIRONMENTAL & LAND CASE 532 OF 2009**

MARY NJERI MUGAI.....PLAINTIFF

VERSUS

PETER NYOIKE MUGAI & 2 OTHERS.....DEFENDANTS

RULING

The Plaintiff/Appellant filed the notice of motion dated 12th September, 2011. It is brought under the provisions of a raft of legal enactment namely, **Article 159 (2) (d) of the Constitution. Section 1A, 1B and 3A and 100 of the Civil Procedure Act, order 8 Rules 3, 5, 7 and 8 of the Civil Procedure Rules.**

The applicant seeks for the following orders:

- “1. *That the plaintiff be granted leave to make a further amendment to the further amended plaint in terms of the annexed draft and the court order.*
2. *That the injunction orders issued herein be rectified as extended to include the property LR. No. 36/111/147 Nairobi.*
3. *That the costs of the application be in the cause.”*

The application is supported by the grounds showed on the body thereto, and the matters deposed to in the supporting affidavit of **Mary Njeri Mungai** sworn on 12th September, 2012.

Only prayer No. 2 was opposed by Mr Njenga learned counsel for the 1st, 2nd and 3rd defendants. The 4th defendant, the Attorney General being sued on behalf of the Registrar of Companies did not appear. As far as prayer No. 1 is concerned it is hereby granted, the applicant is granted leave to file a further amendment to the further amended plaint in terms of the annexed draft plaint within fourteen [14] days.

The defendants were corresponding to file a defence within fourteen [14] days, after the service of the further amended plaint.

As regards prayer No. 2, the appellant seeks for an order of injunction on the property known as **LR. No 36/III/147** to be issued against the defendants. This is supported by the reason that there was a typographical error in the description of the property which was described as LR. No. 36/11/147 Eastleigh instead of 36/111/147. Due to this mistake the defendant should be restrained from dealing with this property in the interest of justice. Mr Gatheru learned counsel for the applicant, submitted that the defendants will not suffer any prejudice due to the inadvertent mistake in this regard, he cited several authorities as well as the provisions of the Constitution and the Civil Procedure Act that gives the court inherent powers to make such orders for ends of justice and to avoid the abuse of the court process.

On the other hand, Mr Njenga opposed prayer No. 2 on the grounds that it was not part of the order made by Mwera J. which was issued on 12th July, 2011. According to the respondents, the applicant should make a fresh application for injunction and convince the court that the matter meets the threshold of granting an order for injunction.

This is the legal position but in this matter it is evident that the plaintiff included this property in the plaint as part of her claim against the defendant. She has annexed a copy of the abstract of title that shows this property was transferred to the third defendant in this matter on 14th July, 1988.

This is also a fairly old matter that has been saddled with interlocutory application while the main suit remains undetermined. Mwera, J expressed himself aptly in the ruling delivered on 24th June, 2010, when he noted the following:

“With the pleadings, the affidavits, the annexures, submissions and authorities cited so far, the only way to fully effectively and finally settle the dispute herein by conducting a trial. Accordingly, the parties are directed to move this suit to trial. To do that, they will ascertain that the principal pleadings are properly on record; each side or by joint act to ensure that complete and paginated bundles of relevant documents are filed and served. Issues agreed or separately drafted to be filed and served. Each side to know the location and readiness of its witnesses by mention of this matter in thirty [30] days. From the various orders on the file and I saw that some of the applications may still be pending, it is directed that the last orders do remain in force until the determination of this suit or further orders. The next listing is for trial.”

I do not know how far the parties have gone in preparing and setting this matter for trial. Obviously, this application that seeks for amendment of pleadings must have stood on the way. In regard to the issue of whether an order of injunction should issue on the subject property, I am of the considered view that sending the applicant to file a fresh application will delay the matter and perhaps as Mwera, J pointed out in the above ruling, it might colour or murk the waters of justice. The subject plot is a subject of this litigation. It must be preserved until this matter is heard and finalized otherwise the litigation over it will be rendered nugatory.

For the aforesaid reasons, I do not see any prejudice that will be suffered by the respondents except for the costs of this application of which I hereby award to the respondents. In the result, the notice of motion dated 12th September, 2011, is hereby allowed with costs to the respondents.

Ruling read and signed this 30th day of March, 2012.

MARTHA KOOME

JUDGE OF APPEAL

Note:

This application was heard and concluded on 13th December, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceeded to write and append my signature thereto in my new capacity.