



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL SUIT 1666 OF 2007

ELIZABETH NJERI KAMAU as Personal Representative

of the Estate of WAINAINA MBUTHIA RANJI alias

WAINAINA MBUTHIA GACHOKA (Deceased).....PLAINTIFF

VERSUS

CYRUS JOSEPH KARANJA1ST DEFENDANT

DISTRICT LAND REGISTRAR2ND DEFENDANT

RULING

There are two applications before the Court brought by the Plaintiff/Applicant. The first one is dated 8th June 2011, and is seeking orders inhibiting the registration of any dealings with the subject land viz L.R. No. NDUMBERI/TING'ANG'A/1939 and 1938 (hereinafter referred to as the suit properties), until further orders of this court. The grounds for this application are that the Plaintiff's claim for ownership of the suit property is currently pending for determination and disposal by this Honourable Court, yet the Defendant/Respondent has set out to sub-divide and eventually dispose of the suit land, which will render the outcome of the said determination nugatory and thereby defeat the Plaintiff's cause herein. These grounds are deponed to in a Supporting Affidavit filed by the Plaintiff on 10th June 2011, and in her Further Affidavit sworn on 28th October 2011, wherein she further deponed that the Defendant entered the suit property on 13th June 2011 and proceeded to erect fences thereon.

The second application is dated 17th August 2011 and is seeking an order that the Plaintiff/Applicant be allowed ingress into and egress from the suit premises for purposes of accessing her livestock and piped water, which access though restricted by the 1st Defendant/Respondent, is fundamental to the very existence of the applicant and her livestock. The grounds for the application are that the 1st Defendant has restricted the Plaintiff's entry and exit into the suit land and in particular, access to her livestock and piped water, which restriction is detrimental to the basic health of both the Plaintiff and her livestock. The Plaintiff in her supporting affidavit sworn on 17th August 2011 further stated that she received a letter on 14th June 2011 from the 1st Defendant's Advocates asking her to move her cow and the cow shed from

the suit properties, which letter she has annexed.

The 1st Defendant opposed both applications. With regard to the first application the 1st Defendant filed a Replying Affidavit sworn on 22nd June 2011 and he denied that he intended to subdivide the suit property. The 1st Defendant stated that what he had done as the registered owner of the suit property, and arising from the fact that the Plaintiff was the registered owner of L.R. No. NDUMBERI/TING'ANG'A/1937 which is adjacent to his property, was to write to the District Surveyor and District Land Registrar of Kiambu District seeking to have the common boundaries of the said properties clearly marked, and the 1st Defendant annexed correspondence to that effect as evidence.

The 1st Defendant response to the Plaintiff's second application is in his Replying Affidavit sworn on 26th August 2011, wherein he avers that there is no piped water or water pipes or pipes of any kind on the suit properties except for a bore hole which he dug, and which the Plaintiff uses to provide for her cow without his consent. Further, that the Plaintiff has interfered with the boundary fence which was put by the district Surveyor Kiambu on 13th June 2011, and the 1st Defendant annexed photographs of the bore hole and damaged fence as evidence.

The 1st Defendant confirmed that on 14th June 2011 his Advocates on record wrote to the Plaintiff's Advocates to request the Plaintiff to remove her cow shed and her cow from the land parcel No. L.R. NDUMBERI/TING'ANG'A/1938 and which notice had not been complied with. The 1st Defendant also averred that on 4th April, 2011, this Court dismissed the Plaintiff's application for temporary injunction in respect of the suit properties, and the present Application is an attempt to obtain injunctive orders by any other means. Copies of the said Court's ruling and order were annexed as evidence.

The parties filed written submissions and at the hearing of the applications on 15th March 2012 requested for a ruling on the basis of the pleadings and submissions filed. The Plaintiff in his written submissions dated 12th March 2012 argued relying on the decision in **Charles Nyaga and Another vs Charles Njagi and Another (2010) eKLR**, that the remedies of an injunction and an inhibition are distinguishable in law, and nothing restricts an applicant from seeking both at the same time. Further, that the Plaintiff had met the ingredients required for the issuance of an inhibition by indicating the apparent danger of losing the subject matter before the suit herein comes to full hearing. The Plaintiff's Advocate in further submissions dated 12th March 2012 on the application dated 17th August 2011 argued that there were consent orders entered on 24th August 2011, and that all parties had agreed to the merits of the application, and urged the Court to sustain the said consent orders until the final determination of the suit herein.

The Defendant's Advocate filed submissions dated 25th January 2012 and reiterated the argument that there is no piped water but only a borehole in the suit property, which belongs to the 1st Defendant and not the Plaintiff. Further, that the Plaintiff had not tendered any evidence to show that the 1st Defendant is seeking to transfer the suit property and the Court cannot act on mere speculation.

I have read and carefully considered the pleadings, evidence and written submissions by the parties to this application. I will first deal with the application dated 17th August 2011. After perusal of the court record of 24th August 2011, the consent entered into by the parties was to stand over the application generally to 29th August 2011 and that leave be granted to the 1st Defendant to file and serve their replying Affidavit within a stated timeline. The temporary orders allowing the Plaintiff access to her cow and cowshed and the piped water were granted by the court itself and were not entered by consent.

In addition the 1st Defendant has opposed the said application, and the Plaintiff has not disputed the 1st Defendant's averments that there is no piped water on the suit property and that he is the one who constructed the borehole on the suit property. In addition the effect of an order of ingress or egress into and from the suit property by this Court would interfere with, and/or restrict the 1st Defendant in his dealing with the suit property, and would be in conflict with the orders given by this court on 5th April

2011 that denied the Plaintiff an injunction against the 1st Defendant in this respect.

I however do find that despite the fact the Plaintiff's injunction was denied by this Court, it is necessary to preserve the *status quo* and the suit property in the state that it is in, pending the hearing and determination of the suit property. Sub-dividing the suit property would interfere with that *status quo*, and as the 1st Defendant has denied that he has any intention of subdividing suit property he will not be prejudiced by the said order. This court will allow the Plaintiff's application dated 8th June 2011 only for that reason and to that extent.

For the reasons given in the foregoing it is therefore hereby ordered as follows:

1. The registration of any dealings with the land parcels known as L.R. No. NDUMBERI/TING'ANG'A/1939 and 1938 is inhibited pending the hearing and determination of the suit filed herein, or until further orders of this court.
2. The Plaintiff's application dated 17th August 2011 is dismissed.

Dated, signed and delivered in open court at Nairobi this ____28th ____ day of ____May____, 2012.

P. NYAMWEYA

JUDGE