



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Civil Case 69 of 2007

GEORGE MUDIAH GICHERU.....PLAINTIFF/RESPONDENT

VERSUS

CHELESTE NJUE AREMKANYA DEFENDANT

PETER NJAGI NJUE APPLICANT

R U L I N G

This is the Notice of Motion dated 30/12/2011 brought under Order 50 rule 1, Order 24 rule 4(1) Civil Procedure Rules and section 128 Registered Land Act seeking the following orders;

1. The enjoining of Peter Njagi Njue (Applicant) as the legal representative of the deceased Defendant.
2. Inhibition to stop any dealings with land parcel No.Muthambi/Gamurathi/268 until final determination of the application and suit herein.
3. For Status Quo to be maintained as it is with respect to possession and use of the said land.

The grounds are in the body of the application. The Applicant is a son of the deceased herein. There is also a supporting affidavit by the Applicant.

The Defendant has filed a long replying affidavit which he relied on.

Both Counsels submitted orally expanding on what is in the affidavits. From the record I can see it was the Plaintiff vide an application dated 29/6/2011 that introduced FLAVIA MUKWANJERU ERENKANYA as a 3rd party in respect of that application. It's now clear that the present Applicant is the one who has Limited Letters of Grant. And since the Defendant is deceased the Applicant has the authority to represent him. I grant that prayer.

The position in this file is that there is no suit pending since the same was heard and Judgment

delivered on 23/4/2008. A decree was accordingly drawn.

On 13th August 2009 the defendant then filed an application to set aside the ex parte judgment. To date that application has never been prosecuted. What has been coming up are other applications yet the Judgment has remained intact. This is unfair and unjust to the Plaintiff who has a Judgment in his favour, and he is the registered proprietor of the land. The late Defendant before his death had all the time to contest the decree herein. I do appreciate that this is a matter touching on land. From the record I can see there was an issue over the late Defendant's final resting place. Now that an administrator has come on record I am giving the Defence 90 days within which to have their application dated 13/8/2009 prosecuted and determined on merits. Failure to comply will automatically lead to its dismissal and the Plaintiff to proceed to execute the decree. I am not issuing any inhibition orders for now.

I however order that the Status Quo prevailing as at now to remain.

The upshot is that prayers No.2 and 4 are allowed. Costs to the Plaintiff/Respondent.

DATED, SIGNED AND DELIVERED AT EMBU THIS 10TH DAY OF MAY 2012.

H.I. ONG'UDI

JUDGE

In the presence of;

M/s Muthoni for K. Kioga for Applicant/Defendant

Njue C/c

Parties