



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MACHAKOS

Civil Case 142 of 2008

IN THE MATTER OF APPLICATION BY MAVOLONI COMPANY LIMITED FOR CHANGE OF L.R. NO. 11154/2-1599 ACRES FROM LEASEHOLD TO FREEHOLD

AND

SUB-DIVISION OF THE ABOVE SAID LAND PARCEL INTO 205 AGRICULTURAL PLOTS RANGING FROM 5 ACRES TO 139 ACRES AND CHANGE OF USER TO A PLOTS RANING FROM 5 ACRES TO 139 ACRES AND CHANGE OF USER TO A TRADING CENTRE ON 9.07 ACRES PRIMARY – CUM NURSERY SCHOOL ON 10 ACRES, A CHURCH ON 3.3. ACRES

AND

PUBLIC PURPOSE PLOT ON 26.54 ACRES

BETWEEN

**MAVOLONI COMPANY LIMITED
PLAINTIFF/APPLICANT**

VERSUS

- 1.LAND REGISTRAR – THIKA.....DEFENDANT**
- 2.THE DIRECOTR OF SURVEY.....DEFENDANT**
- 3.THE COMMISSIONER OF LANDS.....DEFENDANT**
- 4.THE ATTORNEY GENERAL.....DEFENDANT**
- 5.KENYA AFRICAN NATIONAL TRADERS AND FARMERS UNION..... DEFENDANT**
- 6.LONGNECK INTERNATIONAL LIMITED..... DEFENDANT**
- 7.DOMINIC KAMATA NJOGO.....DEFENDANT**
- 8.HELLEN NDUTA KAMATA.....DEFENDANT**
- 9.KENNETH KARATU KIBUNJA.....DEFENDANT**

10. YAHYA MUHAMED SULEIMAN..... DEFENDANT
11. NAMA SULEIMAN..... DEFENDANT
12. DOMINIC KIKUI..... DEFENDANT
13. ELIAS KIMAN..... DEFENDANT
14. TERESIA NDUKU..... DEFENDANT
15. STANDARD CHARTERED MANAGEMENT AGENTS LTD.
DEFENDANTS/RESPONDENTS

R U L I N G

On 18th July 2012, the present application dated 6th July 2012, filed by J.M. Mutinda Advocate for the plaintiff, came up for hearing. This application was filed after the court, on the same 6th July 2012, had stated with regard to a previous similar application that:-

“the application dated 11th June 2012 has been spent. It was served without a hearing date. A fresh application be filed.”

The court found the application dated 11th June 2012 spent, because it had asked for the following reliefs:-

- 1. That the Honourable court be pleased to reinstate interim orders that expired on 22nd May 2012.**
- 2. That the reinstated orders be extended to 6th July 2012 when the matter will be mentioned.**
- 3. That costs of the application be in the cause.**

Obviously, because the extension of interim orders was sought to be up to the mention date of 6th July 2012, the application dated 11th June 2012, would be of no substantive value once the matter was mentioned.

That is the reason why the MAVOLONI COMPANY LIMITED the plaintiff/applicant filed the present Notice of Motion dated 6th July 2012. The application was filed under Order 51 rule 1 of the Civil Procedure Rules and section 3A of the Civil Procedure Act (Cap 21). It seeks orders that:-

- 1. The application be certified as urgent and its service dispensed with in the first instance.**
- 2. That the honourable court be pleased to reinstate interim orders that expired on 22nd May 2012.**
- 3. That the reinstated orders be extended till the amended Originating Summons is heard and determined or until further orders of this Honourable Court.**

On the same date, the applicant filed another Notice of Motion seeking that the court gives directions on the amended Originating Summons amended on 30/12/2009, so that the same would proceed by *viva voce* evidence, and that the proceedings do continue as if the affidavits on record were pleadings. This second application is yet to be considered by the court.

On the present application, the court ordered on 10th July 2012, that it be served for *inter partes* hearing and fixed a hearing date of 18th July 2012.

On the hearing date, Mr Mutinda appeared for the applicant. Mr Ngolya appeared for the 12th, 13th and 14th respondents and also held brief for Mr Kingara for the 5th respondent. Mrs Isika held brief for Mr Kinyanjui for the 9th to 11th respondents. There was no appearance for the 1st to 4th, 6th, 7th and 8th and 15th respondents.

Mr Mutinda submitted in support of the application.

Mr Ngolya opposed the application vehemently. He submitted that Mr Kingara was bereaved and opposed the application and had just been served on 12th July 2012. He submitted that counsel for the applicant had not demonstrated to the court, why the reinstatement and extension of the interim orders is sought. It was counsel's contention that reinstatement of orders cannot be granted casually without cogent reasons.

On behalf of his clients, Mr Ngolya submitted that his office was served the previous day. He denied the contention of Mr Mutinda that service was effected on 12th July and that Mr Ngolya's clerk refused to accept service in the absence of his employer. Counsel also submitted that prayer 3 was mischievous. It sought to extend the interim orders until the hearing of the Originating Summons while the original application for an interim injunction had not been heard. Counsel also contended that an interim injunction could only be extended once for 14 days by consent of the parties.

Mrs Isika stated that Mr Kinyanjui was served on 12/7/2012, but with a different application. Counsel urged that Mr Kinyanjui be given time to file a response.

In response to the submissions of opposing counsel, Mr Mutinda reiterated that the application was served on all the advocates on 12th July 2012. He contended that this was deponed to in the affidavit of service. Counsel argued that under section 3A of the Civil Procedure Act, the court could grant the orders sought, and extend the interim orders beyond 14 days.

I have considered the application, documents filed, and the submissions of counsel who appeared before me. I should state at the outset that after close of counsels' submissions, I declined to adjourn the application as requested indirectly by Mrs Isika, and reserved it for ruling because I thought that the issues relating to the application had been sufficiently ventilated.

The last order which was made before I took over this matter, was given by P.K. Kariuki J (as he then was), on 22nd September 2011. However, in his request for reinstatement and extension of interim orders, the applicant relied on the orders given by Mwilu J, on 10th January 2011, which were that the application dated 7th January 2011 be admitted to be heard during vacation as it was urgent, and that temporary injunctive orders were granted till the hearing of the application on 26th January 2011. I note however, that the said temporary injunctive orders were extended severally. They initially expired on 1st July 2011. On 11th August 2011, they were reinstated and extended to 29th September 2011. Thereafter, there does not appear to have been an extension of the interim orders.

On 9th November 2011, in the presence of Mr Mutinda, Mr Kingara, Mr Ngolya and Mr Maina, I extended the interim orders up to 7th February 2012. This gap between 29th September to 9th November 2011, must have been due to the transfer of judges. On 7th February 2012, I again extended the interim orders to 22nd May 2012. On both occasions, no objection was raised by the counsel who appeared in court.

It is a fact that on 22nd May 2012, the interim injunctive orders lapsed because the court was not sitting that day, as there was an official function elsewhere.

Mr Mutinda for the plaintiff took a bit of time to come to court to seek for reinstatement and extension of the interim orders. When he came to apply, he filed the application dated 11th June 2012. As stated earlier in this ruling, that application was overtaken by events or spent by 6th July 2012. He then filed the present application, but also filed another application for other orders at around the same time. That made the matter appear complex. There is a dispute as to whether the present application was served or whether it was the other application which was served.

When the present application came up for hearing on 18th July 2012, Mr Ngolya opposed it vehemently on behalf of his clients. Counsel contended that no cogent reasons had been given for the orders sought. In any case, the Civil Procedure Rules only allowed extension of interim orders once for 14 days. He also held brief for Mr Kingara. He submitted that Mr Kingara was opposing the request for reinstatement and extension of interim orders. Mrs Isika, who held Mr Kinyanjui's brief, claimed that her instructing counsel was served late, that is 12th July 2012. He did not therefore get instructions to respond. He needed time to respond.

In my view, the whole issue has been clouded by Mr Mutinda filing and serving two applications at around the same time. It would be preferable for him to have applied for the reinstatement and extension of interim orders, without filing another application and struggling to serve both.

Having said so, the lapse of the interim injunctive orders herein was because the court did not sit on 22nd May 2012. It was not because of the plaintiff/applicant, or Mr Mutinda or any of the other parties or their counsel. Justice demands that the absence of the court should not be a reason to penalize or burden any of the parties. Therefore, in my view, the interim orders should and will have to be extended. However, that extension cannot be until the hearing of the Originating Summons. It will only be up to a mention date or the date of dealing with any preliminary issue that will be dealt with. This is because, the interim orders sought to be reinstated and extended, were not up to the hearing or determination of the Originating Summons.

Consequently, I allow the application dated 6th July 2012 and reinstate the interim injunctive orders, and extend them to a date or time which I will fix hereafter today.

Costs in the cause.

Dated and delivered this 30th day of **July** 2012.

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George Dulu

Judge

In the presence of:

Nyalo – Court clerk

Mr J.Mutinda for Plaintiff/Applicant

N/A for Defendants