



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS

Civil Suit 566 of 2011

REGINA WANJIRU
MUCHIKU.....PLAINTIFF

VERSUS

PETER GATHINGO MBUGUA.....1ST
DEFENDANT

GITHUNGURI RANCHING COMPANY LTD.....2ND
DEFENDANT

RULING

The Plaintiff's application by way of a Notice of Motion dated 18th October 2011 is seeking orders that the Defendants by themselves, their servants and/or agents be estopped and or restrained from interfering with the Plaintiff's quiet enjoyment and/or possession of RUIRU/KIU BLOCK 2/2915 (hereinafter referred to as the suit property), until the suit herein is conclusively determined.

The grounds for the application are that the Plaintiff is in possession of Ruiru/Kiu Block 2/2915 which she inherited from her deceased mother, and has all the documents issued by the 2nd Defendant to prove that her late mother was the initial allottee of the suit property. Further, that the Plaintiff commenced registration of the suit property and discovered that the land was already registered in the names of the 1st Defendant, who has by a letter dated 7/9/2011 threatened to evict the Plaintiff from the suit property which would render her destitute.

More detailed averments are found in the Plaintiff's supporting affidavit sworn on 18th October 2011, a Further Affidavit sworn on 2nd March 2012, and written submissions filed 14th March 2012. The Plaintiff produced as evidence an inheritance statement dated 26/8/11 written by one David Kimani, a Kiratina village elder; rulings of the district and provincial land tribunals on the dispute over the suit property, certificate share No 6233 dated 20th February 1995 and receipts for payments issued to her deceased mother Pauline Muchiku by the 2nd Defendant; a ballot number 1886 for 11/4 acre *shamba*; and a clearance certificate issued to the Plaintiff for Ruiru Kiu Block 2 (Githunguri) 2915 dated 15/6/2010.

The Plaintiff in submissions dated 14th March 2011 and in oral submissions made at the hearing on 14/5/2012 argued that she had furnished evidence to show that her deceased mother was the owner of the suit property, and relying on various judicial authorities submitted that this court has power under section 143 of the Registered Land Act (Cap 300) to order a rectification of title and award the land to her.

The 1st Defendant responded in a replying affidavit sworn on 24th November 2011 and in submissions dated 29th February 2012. The Defendant states that he is the registered owner of the suit property and in possession of all the originating documents which were issued to him after he purchased the property from the 2nd Defendant. Further, that the Plaintiff has no letters of administration and has no locus to being the suit before the court. These arguments were reiterated in submissions filed by the 1st Defendant dated 27th April 2012, and during the hearing of the application.

The 1st Defendant annexed as evidence a share certificate serial number 2317 and two receipts issued to him by the 2nd Defendant on 19th October 1989 and 15th August 1990 respectively; a copy of the title deed to the suit property in his name issued on 22nd April 1996; and a copy of an official search issued on 19th August 2010 and of an extract of title/green card marked showing that he is the registered owner of the suit property.

The 2nd Defendant responded by way of a replying affidavit sworn on 7th November 2011 by its Company Secretary, one Henry Wanaina Kihoro, wherein he stated that according to the records maintained by them, the 1st Defendant acquired the suit property from one Sarah Thama Kinyua now deceased, after he purchased one full share which as a member of the company entitled him to among other benefits a 1 ¼ acre parcel of land, a ¼ acre residential plot and a 1/8 plot. Further, that the Plaintiff's mother had returned the ballot given in evidence, and the clearance certificate was given to the Plaintiff in error and she had been requested to return the same to the 2nd Defendant.

I have carefully considered the arguments made by the parties, and the first issue I must address is whether the Plaintiff has locus to bring this application. The Plaintiff contends that the suit property belonged to her deceased mother, and that she inherited the same. I find that since the documents she relies on are based on an allocation to her deceased mother, the Plaintiff need to bring proof that she is the legal representative of the deceased as is required by Order 24 of the Civil Procedure Rules. In addition, it was held by the Court of Appeal in **Troustik Union International & Another vs Mrs Alice Mbeyu & Another, Nairobi Civil Appeal Number 145 of 1990**, that a court cannot make a decision concerning a deceased's estate, where no letters of administration have been issued to an administrator of the said deceased person, and that nobody has capacity to bring a suit concerning a deceased's estate without first applying for letters of administration.

The second issue is whether the Plaintiff has established a *prima facie* case as required by the decision in **Giella vs Cassman Brown & Co Ltd, (1973) EA 358** for an injunction to issue. I find that she has not for two reasons. Firstly this Court has already found that she has no locus to bring this application. Secondly, the Plaintiff has produced in evidence a certificate issued by the 2nd Defendant to her deceased mother as a claim to the suit property, while the 1st Defendant has produced evidence of title and ownership. In addition, the 2nd Defendant which issued the said certificate to the Plaintiff's mother has also contested the evidence of ownership produced by the Plaintiff.

For these reasons the Plaintiff's application dated 18th October 2011 is dismissed, and she shall bear the costs.

Dated, signed and delivered in open court at Nairobi this ____26th____ day of ____July____, 2012.

P. NYAMWEYA
JUDGE