



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

LAND AND ENVIRONMENTAL LAW DIVISION

CIVIL SUIT NO.2076 OF 2001

JAMES WAIGWA KAIRETI.....PLAINTIFF

VERSUS

THE HON. THE ATTORNEY GENERAL.....1ST DEFENDANT

STEPHEN GITAU KAMAU.....2ND DEFENDANT

THE DIRECTOR LAND ADJUDICATION AND SETTLEMENT.....3RD

DEFENDANT

DISTRICT LAND REGISTRAR NYANDARUA.....4TH DEFENDANT

RULING

1. James Waigwa Kaireti (hereinafter referred to as the applicant), has moved this court under Section 3A and 63(e) of the Civil Procedure Act seeking orders as follows:

(i) That pending hearing and determination of this suit, this honourable court be pleased to order the defendants/respondents to give satisfactory explanation on how the suit land (subject matter) was subdivided and sold and title documents issued to third parties to defeat the course of justice in this suit.

(ii) That this honourable court be pleased to demand a satisfactory explanation from the defendants/respondents on how a caution which had been placed against the title to the suit land (subject matter) by the plaintiff/applicant was removed by the Land Registrar Nyandarua (4th defendant/respondent) on 23rd November, 2006 vide a fraudulent court order which was purporting to have been issued by this honourable court in this suit when in fact no such order had been applied for by any party and or issued by this honourable court.

(iii) That this honourable court be pleased to grant appropriate orders in view of the new development on the subject matter in particular appropriated orders aimed at restoring the subject matter to its initial position at the commencement of this suit.

(iv) That cost of this application be provided for.

2. The applicant has sworn an affidavit in support of his application. In short the applicant is aggrieved that a caution which he lodged against the title to Nyandarua/Ol'Joro'orok Salient/1840 in October, 2001, has been irregularly removed without notice to him. The applicant had filed this suit claiming proprietary rights over the suit property. The suit is partly heard before this court.

3. The applicant has now discovered that the caution which he lodged against the suit property has been irregularly removed, and the suit property sub-divided into two portions. The two portions have been sold and transferred to third parties. The applicant maintains that the removal of the caution was deliberately done to defeat his rights over the suit property. This amounts to a miscarriage of justice and an abuse of the court process. Although the respondents were duly served, none of them has filed any reply to the application. Therefore the facts as deponed to by the applicant stand uncontroverted.

4. I have considered the application, the affidavit in support and the annexures thereto. From the copy of the Green Card which was annexed to the affidavit sworn in support of the application, it is apparent that the caution lodged against the suit property was removed on 23rd November, 2006 pursuant to an order allegedly issued in this suit. My perusal of the proceedings in this suit has not revealed any such order. There is therefore need for an appropriate explanation particularly from the 2nd and 4th defendants, with regard to how the caution was removed and the suit property subdivided and sold.

5. In the circumstances, I grant the application to the extent of issuing orders for the 2nd and 4th defendants/respondents to be summoned to appear before this court to give an explanation as to how the caution was removed and the suit property sub-divided, sold and transferred. Further, since it is evident that the suit property is now in the hands of third parties, I would grant the applicant liberty to apply to have the 3rd parties to whom the suit property has been transferred joined as parties to this suit. Those shall be the orders of this court.

Dated and delivered this 23rd day of June, 2011

H. M. OKWENGU

JUDGE

In the presence of: -

Kamere for the plaintiff/applicant

Wasike H/B for Natome for the defendants/respondents

B. Kosgei - Court clerk