



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO 214 OF 2010

PETER MUTUA NDETO AND 4 OTHERS.....PLAINTIFF

VERSUS

HANNAH MURUGI KARUGUDEFENDANT

RULING

The five plaintiffs namely, Peter Mutua Ndeto, Geoffrey Kamau Wanyoike, Jason Masimba, Peter Kimani Waweru and Clement Wango, filed this suit against Hannah Murugi Karugu, on 23/7/09 seeking a declaration order that they are entitled to the plot allotted to them; NYA/C1144/93/1, vacant possession, General damages for trespass and a permanent injunction restraining the defendant from interfering with the said land. Filed contemporaneously with the plaint was the Chamber Summons dated the same day, supported by the affidavit of Peter Kimani Waweru, who described himself as an elder of the plaintiff. By that Chamber Summons, the plaintiff seeks a temporary order of injunction to restrain the defendant from interfering with the suit land pending the hearing of the suit. The suit was first filed in Nairobi as NRB HCC No.363/09 and transferred to Nakuru High Court. Peter Kimani deponed that the parcel of land under plan NYA/C1114/93/1 was allotted to them under the letter of allotment dated 6/5/1999 (PKW 1) and they paid all the monies required, on 25/6/1999 (PKW2). The applicants contend that the respondent entered the land, put up temporary structures and the plaintiff's have suffered irreparably, since the members have no place of worship. Mr. Waweru, counsel for the applicants contended that the plaintiffs have exhibited a survey report which concludes that the boundaries are not in line with the map.

The application was opposed and the defendant swore a replying affidavit dated 23/2/09, to which she exhibited a title (HMK1) in her name, evidence that she is the absolute owner; that the land was allocated to her late husband in 1963 and she has been in exclusive control and possession since the husband's demise; That it is not until 1999 that the Chief of Nyakio Location wrote to her alleging that the land belonged to the Government and was available for public development (HMK2). As a result of the said threat, she filed Nyahururu PMCC7/05, **Hannah Murugi Karugu Vrs John Karanja Kahora.**, (HMK3) seeking to have the chief restrained from interfering with her quiet occupation of the land. The said case is yet to be determined; that the District Surveyor Nyandarua surveyed the land and indicated that the 2 disputed acres here the respondent's and directed that the boundary be fixed. It is the contention of the respondent that the letter of allotment, marked PKW1 is forgery as it is copied to Department heads in Thika District, not Nyandarua County Council and that the sums allegedly paid to the Commissioner of Lands do not add up as the receipt does not indicate in respect of which plots payment was made.

Having considered the pleadings and the counsel's arguments, there is no doubt that the defendant is the registered owner of plot no Nyandarua/Njabini/2291. So far, there is no evidence to show that the land that the applicants were allotted is the same as the plaintiffs' land. In addition the surveyor's letter exhibited did not indicate to whom the plots belong.

I have seen the documents exhibited by the applicants in support of their application. The letter of allotment is dated 6/5/1999. It is over 10 years since the allotment. The question is why have they not obtained a title since? On the letter of allotment, the allottees were given a condition to pay total of Ksh.5,986/= within 30 days, but they have annexed a receipt dated 25/6/1999, in which a sum of 25,986/= was allegedly paid by applicants to the Commissioner of Lands in respect of some unnamed plot. The question is, why would the applicants pay what was not demanded of them? Further the sums in the receipt differ from the total allegedly paid. In addition the letter of allotment was copied to the Town Clerk Thika instead of Nyandarua County Council. With all these glaring anomalies in the two documents, the only conclusion this court can arrive at is that they are not genuine, but falsified documents.

Besides, it is doubtful that the plaintiffs have the necessary locus standi to bring this suit. They described themselves as pastor and Elder. It is not clear who the pastor is but at least the deponent of the affidavit described himself as the Elder. What of the 2 other plaintiffs, are they busy bodies? The 5th plaintiff being a church, it would be expected that the trustees would bring the suit on behalf of the church members. It seems that the plaintiffs are busy bodies and cannot avail themselves of the equitable remedies of injunction. For the reasons that the plaintiff is the registered owner of plot 2291; that the documents exhibited by the applicants are falsified and that the applicants are not properly before this court, I find that the applicants have not made out a prima facie case with probability of success.

The plaintiffs have not been in possession since 1999 and will not suffer any loss. The respondent has been in occupation since 1993 as per the title document and I find that the balance of convenience tilts in the respondent's favour. The application is unmerited and is dismissed. Costs will abide the hearing and determination of the suit.

DATED AND DELIVERED THIS 17th DAY OF JUNE 2011

R.P.V WENDOHO
JUDGE

Present

Mr Ndegwa Wahome for Respondent
CC: Kennedy Oguma