



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 95 OF 2010

MARTHA WANJIKU NYUTU.....1ST PLAINTIFF
PATRICK NYUTU MWANGI.....2ND PLAINTIFF
ANN MARGARET WAMBUI NDUATI.....3RD PLAINTIFF

VERSUS

SUSAN MWIHAKI NJOROGE.....1ST DEFENDANT
KAMAU MATEGA.....2ND DEFENDANT
THE LAND REGISTRAR-MURANG'A.....3RD DEFENDANT

RULING

This ruling is the result of the amended Chamber Summons dated 2nd September 2010 in which the Plaintiffs herein are praying to be given the following orders:

(a) That the honourable court be pleased to hear the application exparte in the 1st instance owing to its urgency.

(b) That a temporally injunction do issue directed against the 1st Defendants, her agents, servants or anybody claiming or working under her from in any way committing any acts of waste; interference with the plaintiffs peaceable occupation and utilization of parcels No. LOC 6/MUTHITHI/1433, 1723 and 1722 now re consolidated into parcel No. LOC 6/MUTHITHI/1041, pending hearing and determination of this suit.

b (i) That the orders herein do operate as stay of proceedings in Murang'a Principle Magistrate's Court L.D.T. Case No. 89 of 2007.

(c) That an order of prohibition do issue directed against the land registrar Murang'a, the 3rd Defendant herein prohibiting any transactions in parcel No. LOC 6/MUTHITHI/1041 pending the hearing and determination of this suit.

(d) That costs be provided for.

The Summons is supported by the affidavit of Martha Wanjiku Nyutu. The Defendants opposed the Summons by filing the replying affidavit of Susan Mwhaki Njoroge sworn on 15th September 2010 and another affidavit sworn on 22nd September 2010.

A careful perusal of the pleadings herein, will reveal the history of this case. The filing of this suit

was provoked by the cancellation of titles L.R. NO. LOC. 6/MUTHITHI/1433, 1723 and 1722 pursuant to the decision of the Murang'a Land Disputes Tribunal vide Murang'a L.D.T. No. 89 of 2009 giving rise to L.R. No. LOC. 6/MUTHITHI/1041 (consolidation). The Plaintiffs herein have challenged the legality of the tribunal decision in the Plaint. The Plaintiffs are now before this court seeking for conservatory orders to avoid further transfers or alterations of property until this suit is heard. It is the submission of the Plaintiffs further that if the orders are not given they are likely to be evicted to the utter detriment.

The Defendants opposed the application on the basis that there is no competent suit before this court.

I have anxiously considered the submissions of learned counsels from both sides. I have also considered the grounds set out on the face of the summons and the facts deponed in the affidavits filed for and against the summons. The Plaintiffs are basically seeking for prohibitory orders of injunction. In determining such an application, the principles are well settled. First, an applicant must show that he has a prima facie case with some probability of success. In this case the Plaintiffs are saying that they will be able to show that the Land Disputes Tribunal had no jurisdiction to hear and determine a dispute in respect of title to land. The Plaintiffs have also stated that they will be able to show that the Land Disputes Tribunal decided a dispute without hearing the registered proprietors of the suit land. In my view those grounds are enough to show that the Plaintiffs have a prima facie case with high chances of success. The second principle is that an applicant must show the irreparable loss he would suffer if the order is denied. It is obvious that if the order is denied, the Plaintiffs will be evicted from the suit land. That loss cannot be quantified in monetary terms. Again, I am convinced the applicants have shown the irreparable loss they would suffer. The third principle to be considered is that of convenience. Since this court is not in doubt in the matter there is no need to consider this principle.

In the end I am convinced that the amended summons dated 2nd September 2010 is well founded. It is allowed as prayed.

Dated and delivered at Nyeri this 29th day of July 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Karweru for the plaintiff, N/A for T.M. Njoroge for 1st Respondent. N/A 2nd respondent and 3rd Respondent.

J. K. SERGON
JUDGE