



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
MISC. APPLICATION NO. 223 OF 2011

CONSOLATA WANJA
GATHUA.....APPLICANT

Versus

CHRISTOPHER NDETI
ITULE.....RESPONDENTS

RULING

The subject matter of this ruling is the Summons dated 22nd November 2010 in which Consolata Wanja Gathua the applicant herein, has applied for issuance of a temporary order of injunction to restrain Christopher Ndeti Itule the respondent herein, from evicting the applicant from LR. No. GATUANYAGA/NGOLIBA/BLOCK 322 pending the hearing and the determination of her appeal before the Provincial Land Disputes Appeals Committee, Nyeri. The applicant filed two affidavits she swore in support of the summons. The respondent filed ground of opposition to resist the motion.

I have considered the grounds set out on the face of the summons plus the facts deponed in the affidavits filed in support. I have also considered the grounds of opposition. The applicant avers that she filed a complaint before the Thika Land Disputes Tribunal claiming to have purchased a parcel of land measuring 1 acres from Kantafu Company Ltd. The applicant was issued with title No. LR. No. GATUANYAGA/NGOLIBA/ BLOCK 2/322 in 1997. She went before the Land Disputes Tribunal seeking for a declaration that the Respondent was a trespasser on the aforesaid land. The complaint was heard and dismissed on 30th March 2010. Being dissatisfied, the applicant filed an appeal before the Nyeri Provincial Land Disputes Appeals Committee. There is evidence that the Provincial Appeals Committee issued a letter to the Respondent directing him to maintain the status quo pending appeal. The applicant has now complained that the Respondent has taken steps to harass her with the intention of evicting her from the land in dispute while her appeal is pending. When confronted with the aforesaid allegations, the respondent simply filed grounds of opposition in which he raised technical issued against the application. He did not file a replying affidavit to controvert the applicant's averments.

After a careful consideration of the rival submissions I am convinced that there is a real danger that the respondent may evict the applicant from LR. No. GATUANYAGA/NGOLIBA/ BLOCK 2/322 unless he is restrained by an order of injunction. There is no denial that the applicant's complaint was dismissed by the Thika Land Disputes Tribunal vide Thika Land Case No. 71 of 2009 on 30th March 2010. It is also not disputed that the applicant has filed an appeal before the Central Province Land Disputes Appeal

Committee, Nyeri to challenge the decision. The appeal is still pending. In the circumstances of this case there is need to grant the orders sought to maintain the status quo pending the hearing and determination of the appeal.

In the end I find the summons dated 22nd November 2010 to be well founded. The same is allowed as prayed costs abiding the outcome of the Appeal.

Dated and delivered this 8th day of July 2011.

J. K. SERGON

JUDGE

N/A for the parties.

J.K. SERGON

JUDGE