



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

LAND AND ENVIRONMENTAL LAW DIVISION

CIVIL SUIT (ELC) NO.351 OF 2010

WINNIE NYAMBURA

KIHARA.....PLAINTIFF

VERSUS

MONICAH WANZA KALOKI.....1ST DEFENDANT

NANCY WAMBUI.....2ND DEFENDANT

PETER KIARIE KIMANI.....3RD

DEFENDANT

LEONARD CHEGE (Sued as a National Official of World

Wide Fellowship Centre Kahawa West Nairobi).....4TH DEFENDANT

RULING

1. By a Chamber Summons dated 21st July, 2010, Winnie Nyambura Kihara who is the plaintiff in this suit (hereinafter referred to as the applicant), restraining the defendants their servants or agents from interfering with her peaceful occupation of Residential Plot No. 039 on LR No. 5569/5 Kahawa West (hereinafter referred to as the suit property), or evicting the applicant from the suit property, or demolishing any structures, or taking away any goods from the suit property. The applicant maintains that she is the lawful owner and occupier of the suit property pursuant to a court order issued in HCCC No. 2794 of 1995 (OS), and that the defendants are without any lawful cause demolishing the premises on the suit property with the intention of evicting the applicant from the premises.

2. The applicant has also filed a suit against the defendants in which she seeks a declaration that she is the legal and or beneficial owner of plot No. 039 which is a portion from land parcel known as LR No. 5569/5, pursuant to a court order issued in HCCC No. 2794 of 1995 (OS). The applicant also seeks an order of permanent injunction restraining the defendants by themselves or their agents from evicting the applicant from the suit property or in any way interfering with the applicant's quiet and peaceable

possession of the suit property. Finally, the applicant seeks general and special damages as well as costs of the suit.

3. On the 22nd July, 2010, this court certified the application dated 21st July, 2010 as urgent and issued interim restraining orders pending the inter-parte hearing of the application.

4. In response to the application Peter Kiarie Kimani who is the 3rd defendant swore a replying affidavit in which he swore *inter alia* that the applicant has never been a party in HCCC 2794 of 1995 (OS) nor does she have any claim or entitlement to the demolished premises. It was further averred that the demolished premises were on plot No. 025 and not plot No. 039 which the applicant claims. It was further deponed that plot No. 039 was allocated to the 4th respondent to build a church therein. It was alleged that the applicant obtained receipts bearing her name from the firm of S.G Wachira & Company Advocates, by misrepresenting herself to be a beneficiary of the judgment in HCCC 2794 of 1995. It was maintained that the applicant has never been in possession of plot No. 039. This plot was in fact unoccupied and undeveloped at the time it was allocated to the 4th defendant.

5. Pursuant to leave granted on 25th October, 2010 the applicant filed a further affidavit in which she stated that on 23rd October, 2010 some armed hooligans and goons demolished her residential house. The application which was scheduled for hearing on 25th November, 2010 was adjourned at the request of the defendants who had just changed advocates.

6. The application came up for hearing again on 16th May, 2011 when hearing proceeded ex-parte. neither the defendants nor their advocates attended court. I have carefully considered the motion which is before me. It being one seeking an order of interlocutory injunction, the applicant must satisfy this court that she has a *prima facie* case with a probability of success, and that if the orders of interlocutory injunction is not granted she stands to suffer irreparable loss which cannot be adequately compensated by an award of damages.

7. The applicant has exhibited documents showing that there was a judgment in favour of Norman Kariuki and 27 others who were declared in HCCC No. 2794 of 1995 'OS' to have acquired 7 acres out of the suit property through adverse possession. The judgment does not specify who the other 27 plaintiffs are. Nonetheless, the applicant has exhibited a letter from S. G. Wachira & Company Advocates who was the advocate who acted for the successful plaintiffs in HCCC 2794 of 1995 'OS'. In the letter the applicant is being asked by the advocate to pay the costs of legal fees, survey and related expenses to facilitate the sub-division and allocation of plots in the suit property. The applicant has also exhibited receipts for payments made by herself for the sub-division, survey and other expenses. Thus the applicant's explanation that she was allocated a sub division of the suit property which she identifies as Plot No. 039 Kahawa West is *prima facie* credible. On the other hand although the defendants maintain that the applicant was not a party in HCCC 2794 of 1995 'OS', nor is she the lawful owner of plot No. 039, the 3rd defendant who swore the replying affidavit has not exhibited anything to demonstrate his allegation that plot No. 39 was allocated to the 4th respondent. Nor have the defendants substantiated their contention that the applicant obtained her documents through misrepresentation. Indeed no affidavit has been sworn by the advocate who wrote the letter to the applicant to support that contention.

8. On the whole, I am satisfied that the applicant has provided *prima facie* evidence that she was one of the beneficiary of the judgment which vested 7 acres of the suit property onto the applicant and others by virtue of adverse possession. It is evident that unless an order of interlocutory injunction is granted the applicant may suffer irreparable loss. This fear is not unfounded as already the applicant's structure which was on the suit property has been demolished and there is danger that she may be totally evicted from the

suit property. I find that the applicant is entitled to the protection by the court. I therefore allow the application to the extent of granting interlocutory order of injunction in terms of prayer (3) and (4) of the chamber summons. In view of the circumstances of this case and the fact that the applicant's house has already been partly demolished, I find it necessary to direct the officer in-charge Kiamumbi police station to provide security and assist in the enforcement of the orders.

Costs shall be in the cause.

Dated, signed and delivered this 2nd day of July, 2011.

H. M. OKWENGU

JUDGE

In the presence of: -

Kamau for the plaintiff/applicant

Advocate for the defendants absent

B. Kosgei - Court clerk