



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Civil Case 82 of 2008

CHARLES WAITUIKA GITHAIGA.....PLAINTIFF/APPLICANT

VERSUS

PAUL WANJUE T. WARUI.....DEFENDANT/RESPONDENT

RULING

Pursuant to *Section 128* of the Registered Land Act and *Order XXXIX rules 1 and 2* of the Civil Procedure Rules, Charles Waituika Githaiga, the applicant herein, took out the Summons dated 22nd May 2008 in which he sought for the following orders:

- 1. *That this application be certified as urgent and be heard on a priority basis.***
- 2. *That an inhibition do issue preserving land parcel No. KIINE/SAGANA/3225 and inhibiting the registration of any dealings pending the hearing of this application interparties.***
- 3. *That an inhibition do issue preserving the subject matter and inhibiting the registration of any dealings in respect of land parcel No. KIINE/SAGANA/3225 pending hearing and determination of this case.***
- 4. *An injunction do issue against the respondent and his agents and/or servants and Land Registrar, Kirinyaga District or his agents from entering or interfering with land parcel No. KIINE/SAGANA/3225 pending the hearing and determination of this application interparties.***
- 5. *An injunction do issue against the respondents his agents and/or servants and Land registrar, Kirinyaga District and/or agents from entering, interfering with land parcel No. KIINE/SAGANA/3225 pending the hearing and final determination of this suit.***
- 6. *Costs of this application be provided for.***

He swore an affidavit he filed in support of the Summons. When served, **PAUL WANJUE T. WARUI**, the Respondent herein, filed a Replying Affidavit he swore to oppose the Summons.

The record shows that he obtained the aforesaid orders ex parte before Lady Justice Khaminwa on 22nd May 2008 on a temporary basis. It is the submission of Mr. Gacheri, learned advocate for the Applicant that the Respondent fraudulently obtained orders from Baricho Land Disputes Tribunal case No. 2 of 2003 to transfer the suit premises to himself. It is alleged that he misled the tribunal into believing that the suit premises was owned by one James Gategwa whereas that was not true. Annexed to the Supporting Affidavit is a copy of a certified order made on 5th November 2007 which decreed that the parcel of land known as **KIINE/SAGANA/3225** be transferred to the Respondent. The Applicant further argued that he was never a party to that suit neither was he served with the pleadings or order. He accused the Respondent of unlawfully registering a restriction on his title without giving him notice. For the above reasons the Applicant urged this Court to grant the orders to preserve his property pending the

determination of this dispute.

I have already stated that the Respondent opposed the application by filing a Replying Affidavit. It is the submission of the Respondent that the original land known as **KIINE/SAGANA/370** was owned by the Respondent's father. It was, however, registered in the name of James Kategwa T. Warui to hold in trust for the Respondent and himself. It is alleged that James Kategwa Warui subdivided the land into three portions. But he later consolidated the same to form **KIINE/SAGANA/3225**. The Respondent stated that when the Applicant refused to give him his share he filed a complaint before the Baricho Land Disputes Tribunal vide L.D.T. Case No. 2 of 2003. In that complaint he sued for a share in original parcel No. **KIINE/SAGANA/370**. At the end of that case the Respondent said he was awarded 3 acres to be excised from **KIINE/SAGANA/370**. It is said the Respondent appealed to the Provincial Land Disputes Appeals Committee but his appeal was dismissed. The Respondent alleged that the Applicant without disclosing that the L.R. Number had changed subdivided the land into sixteen portions and started to dispose the same with impunity. The Respondent denied any allegations of fraud. In fact he alleged the Applicant was fraudulent himself.

I have considered the oral submissions of learned counsels from both sides. I have further taken into account the grounds put forward on the fact of the Summons and the facts deponed in the Supporting Affidavit. The court has a wide discretion to make an order of inhibition under *Section 128* of the Registered Land Act for a particular time or until the occurrence of a particular event or generally until a further order. Of course this suit arose from the decision of the Baricho Land Disputes Tribunal. In the Plaintiff seeks for *interalia* to have the decision of Baricho Land Disputes Tribunal to be declared null and void. I have carefully considered the issues behind this suit and the application. They are weighty issues which can only be determined in a trial. In such a case it is necessary to preserve the subject of the suit so that the entire action is not rendered useless. Looking at the history of this case, I am convinced it is necessary for the orders sought to be given so as the rights of the parties are preserved pending a final determination.

In the end I find the summons dated 22nd May 2008 to be well founded. It is allowed as prayed.

Dated and delivered at Nyeri this 19th day of February 2010.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Gacheru for Applicant. No appearance for Munene for the Respondent.