



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Environmental & Land Case 906 of 2007

JOSEPH MURORI MUIRURI. 1ST PLAINTIFF

LUCY WANJIKU MURORI. 2ND PLAINTIFF

VERSUS

E J GACHUCHE. 1ST DEFENDANT

JAMES WAHOME GITHAIGA. 2ND DEFENDANT

R U L I N G

The application before me is a Chamber Summons dated 6th November, 2007 brought by the Plaintiff. It seeks that the Defendant's Defence and Counterclaim be struck out for being scandalous, frivolous and vexatious.

The Plaintiffs claim in their plaint is that they are the first registered owners of L.R. Thika Municipality/Block 2/842 and L.R. No. Thika Municipality/Block 2/843 in respect of which they have certified of title. They aver that the Defendants in March 2007 without lawful authority or consent from the Plaintiffs, wrongfully and illegally trespassed on the said plots of land by fencing them. The Plaintiffs accordingly claim suffering loss and damage.

The Defendants in their defence claim that the said pieces of land have been unlawfully alienated from a public road used by them and by other members of the public. They further aver that if the Plaintiffs have been issued with titles to the pieces of land, then the certificates thereof are fraudulent and unlawful. They claim that the suit plots have been delimited in front of their houses in Makongeni Estate, thus denying them access from the estate to the public road.

In a counterclaim, the Defendants have claimed that the Plaintiffs are trespassing on public land to the detriment of the Defendants and other members of the public. They accordingly seek cancellation of the certificates of title and removal of the Plaintiffs from the same to give access to the road by Defendants and other members of the public.

It is on the above circumstances that the Plaintiff in this application seeks a striking out of the Defendants defence and counter-claim. The reasons shown in the supporting affidavit are that the defence and counter claim are scandalous, frivolous and vexatious. This, the Plaintiffs say, is because they hold certificates of title to the suit lands as lessees from the Government in a first registration which under section 153 of the Registered Land Act, Cap 300, is final and conclusive. The Plaintiffs also assert that the Plaintiffs have no *locus standi* to protect the interests of the public.

I have carefully considered the grounds upon which this application is based. Clearly, the Plaintiffs are the registered owners of the two pieces of land in dispute. However, the defendants are alleging fraud in the manner the registration of ownership of the suit properties was obtained. Effectively, the Defendants are averring that there was no lawful basis upon which the Plaintiff would have acquired and registered in his own name a public land used and usable by the members of the public of whom they are one.

It appears to me also that whether or not other members of public are interested in preserving the usage of the suit premises, that alone does not stand on the way or prevent the Defendants from protecting their own personal rights over the land from being violated by the Plaintiffs.

It is also apparent from the record that the Municipal Council of Thika in which the pieces of land in dispute are situated and who are the custodians of it at the local level, all along stood against alienation of the plots in favour of the Plaintiffs on public interest.

The end result therefore is that mere registration of ownership of the suit premises, plus the availability of certificates of title in the hands of the Plaintiff, does not close out the defendants from raising the issues of fraud and/or public interest. The case raises many reasonable issues which can only be disposed of by concrete evidence during full trial. The defence and Counter-claim filed is not scandalous or frivolous or vexatious therefore. The suit therefore is a proper one to go to trial.

This application in conclusion, has no merit. It is hereby dismissed with costs to the Defendants. Orders accordingly.

Dated and delivered at Nairobi this 4th day of February, 2010.

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D A ONYANCHA
JUDGE