



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Civil Case 129 of 2005

STEPHEN MURIITHI KARUBUI PLAINTIFF
VERSUS

JANE WAINOI GAKUYA 1ST DEFENDANT
PETERSON MURAGE KINYUA..... 2ND DEFENDANT
JOSEPH GAKUYA GITHAIGA..... 3RD DEFENDANT
JULIUS KINYUA GAKUYA (MINOR)..... 4TH DEFENDANT
CHARLES BUNDI GAKUYA (MINOR)..... 5TH DEFENDANT
PAUL KARANI GAKUYA..... 6TH DEFENDANT
MARY KARUANA NJOROGE..... 7TH DEFENDANT

AND

PETER MUNENE MUGO..... 1ST APPLICANT
PETER MUGO GATHARA 2ND
APPLICANT
MARY KARUANA NJOROGE..... 3RD APPLICANT

R U L I N G

The application dated 12/10/2009 is filed by the 3 applicants who are nonetheless not parties in this suit. They are seeking an order for review and/or setting aside of the order issued on 14/11/2007 by **Hon. Justice Khaminwa** in as far as it relates to land parcels No. INOI/ KARIKO/1966 and INOI/KARIKO/1968. They are also asking that the prohibitory order issued against those 2 titles be lifted. There are 3 grounds on the face of the application. The same is also supported by the affidavit of MARY KARUANA NJOROGE. It is opposed by the plaintiff vide his replying affidavit dated 22/2/2010. I have considered the application, the grounds thereon and the rival affidavits. I have also considered the law applicable. On the issue of locus standi raised by the Respondent, my finding is that the same lacks merit. Section 80 of the Civil Procedure Act and Order XLIV Rule 1(1) empower **“Any person considering himself aggrieved”** by a decree or order to file an application for review. Such person does not need to be a party to the suit. This application is therefore properly before the court. I have gone through the pleadings herein however. I note that in his plaint dated 7/12/2005 the plaintiff seeks for orders against all the parcels in question including those now registered in the names of the Applicants herein. As rightly submitted by Mr. Kariithi, the said parcels were transferred to the applicants after this matter had already been filed. This could have been done in a bid to defeat the plaintiffs claim but I do not wish to speculate. What

is clear however is that if the prohibitory orders are lifted the plaintiff's claim will be affected and he will therefore be prejudiced. That I believe is the reason why those prohibitory orders were granted in the first place. I appreciate the fact that the applicants herein are not parties to the suit but it is unfortunate that they bought land which was already a subject matter in court. They will therefore have to wait until the suit herein is determined. The defendants were well aware of this suit and the nature of the plaintiff's claim. They should not therefore have transferred the parcels of land to the applicants herein.

For these reasons, the court finds that the order dated 14/11/2007 is in order and the same must be retained in the interests of justice. The application dated 12/10/2009 must therefore fail. The same is hereby dismissed with costs to the Plaintiff/Respondent.

W. KARANJA
JUDGE

Delivered, dated and signed at Embu this 10th of May 2010.

In presence of:- Mr. Utuku for Mr. Kariithi and Mr. Muriithi for Mr. Kagio