



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL SUIT NO. 82 OF 1996

ANDREW ROBI WAMBURA PLAINTIFF/APPLICANT
VERSUS

MOGESI MARWA alias ITARORO 1ST DEFENDANT/RESPONDENT
MARWA CHRISTOPHER ITARORO 2ND DEFENDANT/RESPONDENT

RULING

This is a very old case which for over 14 years has not been heard and determined. It is unfortunate that counsel for the parties have not diligently pursued its finalization.

In the plaint, the plaintiff claimed that in 1998 he purchased a parcel of land known as **Bugumbe/Mabera/137**, (hereinafter referred to as “**the suit property**”), measuring 3 acres from the share of the 1st defendant and the father of the 2nd defendant who were joint proprietors thereof together with one Waisiku Itaroro. He urged the court to order the defendants to execute a transfer of the suit property in his favour and grant a permanent injunction restraining the defendants from interfering with the suit land in any way. He further sought a declaration that the defendants are holding the suit land in trust for him.

The defendants filed a joint statement of defence and denied the plaintiff’s claim. They alleged that the plaintiff had unlawfully settled on the suit land and as a result they had filed **Civil suit NO. 649 of 1995** before the Migori Senior Principal Magistrate’s court to challenge his occupation thereof. They urged the court to dismiss the plaintiff’s suit.

On 16th October, 2007, the plaintiff filed an application seeking a temporary injunction to restrain the defendants from interfering with, alienating and/or committing acts of waste of the suit property pending hearing and determination of this suit. In his affidavit in support of the application, the plaintiff stated that he took possession of the suit land immediately after he purchased the same. He is living there together with his entire family and he doesn’t have any other land, he stated. He further averred that on 6th September, 2007, the 1st defendant threatened his wife with a panga while his animals were destroying crops on the suit land.

The defendants filed a replying affidavit and denied that they had encroached onto the suit land. They further alleged that the suit land was no longer in existence as it had been subdivided and several subdivisions created. As a result the title has been closed. They annexed to their affidavit an extract of the register (Green Card). They urged the court to dismiss the plaintiff’s claim.

Having considered the affidavits on record and submissions by counsel, I do not deem it appropriate to go into detailed analysis of the arguments presented before this court. Suffice to say that the plaintiff has been in occupation of the suit land for many years irrespective of whether the title of the same has been closed or not. This dispute ought to be resolved substantively by hearing the case as soon as possible. In the circumstances, I order that the status quo on the disputed land by whatever description it is known be maintained until this case is heard and determined. I further direct that this suit be set down for hearing on priority basis. The parties should proceed to take a hearing date within the next 30 days from the date hereof. I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT KISII THIS 29TH DAY OF JULY, 2010.

D. MUSINGA

JUDGE.

29/7/2010

Before D. Musinga, J

Mobisa – cc

Mr. Oguttu for Mr. Nyagesoa for the Plaintiff
Mr. Nyagwencha for Mr. Abisai for the Respondent

Court: Ruling delivered in open court on 29th July, 2010.

D. MUSINGA
JUDGE.