



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
HCCC NO. 2 OF 2004
LESIT J.

NCURUBI MBERIA..... APPELLANT

Versus

GEOFFREY MUGAMBI JOHN.....RESPONDENT

RULING

The application is the one dated 26th July 2006. It seeks the court to order removal of all cautions prescriptions or inhibitions registered upon land parcel NO. GIAKI/THUURA/996. The grounds of this application are

(a) The applicant is a very old mother, sickly and weary; of poor health and will wish to have this case determined at the earliest.

(b) The purpose for which the caution was registered has come to pass.

The application is opposed the respondent has filed a replying affidavit in which he opposes the granting of the order to remove cautions prerestrictions and inhibitions upon the suit land. The applicant was represented by Mr. Ondari in his submissions Mr. Ondari stated that this matter is concluded and referred the court to the ruling that was delivered on the 21st May 2010 by Hon. Kasango Judge. In that ruling the learned judge gave a chronology of cases filed by the parties in this suit and ruled that CMCC 436/93 determined the issues between the parties and since the decision in that case has not been challenged or set aside it still stands and any other suits filed by the parties torching on the same subject matter are res judicata.

Mr. Ondari has asked this court to find that the issue e between the parties has been fully determined and that therefore the purpose for which the cautions restrictions and inhibitions were placed upon the title property has since matured and the same should therefore be removed.

Mr. Kaimenyi was the advocate for the respondent. He relied on the replying affidavit dated 25th October 2010 sworn by the respondent. In his submissions Mr. Kaimenyi stated that the respondent has lived on the suit property all his life. He submitted that the applicant on the other hand was a married woman with a home in another area. Counsel urged that the respondent had filed another suit HCCC 89/2010 and therefore the caution cannot be removed as removing it will render the suit nugatory and may also render the respondent homeless. I have considered the submissions by both counsels and have perused the record of this suit. This matter was an appeal filed by the applicant in this case challenging the decision of the Eastern Province Land Dispute Appeals Committee. The committee had ruled that the respondent was entitled to one acre of land in the suit property. That decision was contradicting the decision of CMCC 436 of 1993 which ruled to the effect that the respondent was a trespasser and that he should vacate the suit property. The learned judge quashed the decision Land Dispute Committee and awarded the applicant herein the costs of the appeal herein. The effect of the learned judge decision was that the suit property belongs to the applicant herein and that respondent was a trespasser. The effect of the judgment was also that the issues for determination between the parties have fully been prosecuted considered by a competent court and have been fully determined.

The respondent in his replying affidavit has stated that he has filed an origination summons in HCCC no 89 Of 2010 claiming adverse possession of one acre out of the suit property. The respondent has not annexed the Originating Summons he claims to have filed in the cited case. The respondent has also not disclosed where the alleged suit was filed that is before which court. I find that the respondent is not being candid in this matter. If indeed he has filed another suit he ought to have come out clearly to disclose the full details of the alleged suit. That notwithstanding the respondents allegation that he has

filed another suit flies in the face of this courts judgment which was delivered by Hon. Kasango Judge on the 21st May 2010. The learned judge's finding that no suit can be filed for determination of the issues between the parties which were the subject matter of CMCC 436 of 1993 as the same would be res judicata applies to the alleged Originating Summons filed by the respondent.

Having carefully considered the application before me. I am satisfied that the issues for determination between the parties in the instant case (Appeal) have been fully determined by a competent court and that therefore any caution, restrictions or inhibitions registered upon the suit property must now be removed. I find merit in the applicants application dated 26 July 2010 and therefore grant the same in the following terms:

- (a) An order be and is hereby issued that all cautions, restrictions or inhibitions registered upon Land Parcel No NYAKI/THURA/996 be and are hereby removed.
- (b) The respondents will bear the cost of this application.

DATED SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF NOVEMBER 2010

**LESIIT
JUDGE**