



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL CASE 150 OF 2007

JOHN MURIITHI KIRAGU.....PLAINTIFF

VERSUS

MARY NYAMBURA JONAH.....1ST DEFENDANT

COUNTY COUNCIL OF KIRINYAGA.....2ND DEFENDANT

RULING

The application dated 4/12/2007 seeks orders to restrain the defendants themselves, their servants or agents from subdividing disposing off charging, assigning or in any other way alienating the suit premises parcel No. Mwerua /Kagio/212/48 pending the hearing and determination of this suit. Exhibit JNK2 shows that the property was registered in the names of Kiragu Stephen and James Kamanda Mwangi as the proprietors of the leasehold interest subject to the agreement and other matters contained in the registered lease, to the entries in the register relating to the lease and to such of the overriding interests set out in Section 30 of the land Registered Act as may for the time being subsist and affect the land comprised in the lease. The lessor is Kirinyaga County Council for term of 33 years given 1/1/1970.

On 22/11/2007 a letter was written by the Council addressed to Jane Wangechi Kiragu and Mary Nyambura Jonah advising Council Surveyor would visit the land for purpose of subdividing the plot subject to this suit. ("plot No. 48") First of all this letter was addressed to a deceased person namely Jane Wangechi Kiragu.

Secondly as stated above this land was partly of Kiragu Stephen deceased husband of Jane Wangechi Kiragu who was granted letters of administration of the estate of her husband but she died on 25/3/2007. At the time of her death she had obtained orders for confirmation of the grant and the assets of deceased being distributed under the Succession Act Cap.160 Laws of Kenya Section 35 thereof states the widow has a life interest on all assets "upon death of surviving spouse the estate shall be divided equally among the children of deceased Section 37 also controls the power of the surviving spouse. "Provided that in the case of immovable property the exercise of that power shall always be subject to the consent of the court." No consent of court had been obtained to the sale transaction

It is therefore to be noted that assets in this case were confirmed to the widow of deceased and upon her death the properties are now of her children in equal shares the issue of locus stadi can therefore be arguable. The issue of the validity of sale is also arguable. Again whether or not the leasehold interest has expired is a matter for determination by court. Section 64 (2) Registered Land Act 300. Determination of leasehold interest is completed on application to Registrar who shall cancel the lease.

I have considered the submissions by counsel on both sides and the provision of Registered Land Act and Succession Act. I am of considered view that the plaintiff/Applicant has demonstrated a prima facie case. It is clear if order is not granted the Defendants will alienate the suit property thus causing loss to the Applicant and his siblings which cannot be compensated in damages.

I therefore allow the application and grant orders as prayed. The costs shall be in the cause. It is so ordered.

Dated this 7th April, 2008.

J. N. KHAMINWA

JUDGE

7/4/2008

Khaminwa – Judge

Njue – Clerk

Mr. Kingara

Mr. Maina Kagio

Mr. Magee HB for Mr. Chomba

Ruling read in open court.

J. N. KHAMINWA

JUDGE