

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 2331 of 1997 (OS)

HENRY CHEGE MUKARA.....PLAINTIFF

VERSUS

FRANCIS GITHINJI WAWERU.....DEFENDANT

R U L I N G

By this Notice of Motion the plaintiff seeks order that the Officer Commanding Riruta Police Station (OCS) be commanded to assist in overseeing the survey of plot LR No DAGORETTI/RIRUTA/677/2261 so as to determine the exact boundary and location of 0.195 acres of the said parcel of land due to the plaintiff as was ordered by this Honourable Court on 19th December 2000.

The plaintiff also prays for costs of this application. The application is based on the ground that the defendant, judgment debtor is likely to resist the subdivision. The plaintiff also relied on his own affidavit sworn on 28th August 2007. The facts which gave rise to this litigation as gathered from the pleadings briefly may be stated.

On or about the 9th November 1984 the defendant sold to the plaintiff a piece of land measuring 0.195 of an acre out of **LR No DAGORETTI/RIRUTA/677/2261** at Sh 57,000/= which was paid in full. Immediately by 13th November 1984, the plaintiff took possession of the said parcel of land and constructed a dwelling house. But thereafter the defendant refused to effect the subdivision to enable the plaintiff acquire title. On 18th September 1997 the plaintiff brought this suit by way of originating summons for a declaration that having been in possession for 12½ years, he had acquired title to the same. The defendant on being served with summons filed a replying affidavit which he averred that he was not the registered proprietor of the suit land namely **LR No. DAGORETTI/RIRUTA/677/2261** which is registered in the name of KAHIGA s/o GATI his deceased father and that the plaintiff was a trespasser on the suit land. Later the suit proceeded ex-parte and was decided in favour of the plaintiff who now seeks police assistance in overseeing the survey of the suit land and determine the boundary and location of 0.95 acres out of the suit land. Be it as it may it is unlawful to utilize the police in a civil action for the purpose of effecting or aiding private evictions or reinstatements. The Court of Appeal in **KAMAU MUCUA V. THE RIPPLES LTD CA No. 186 of 1992** (unreported) had this to say:

“Paragraph 4 of the formal order extracted on 22nd September 1992 says that police assistance may be enlisted to ensure that the plaintiff i.e the respondent is reinstated to the premises. It would be unlawful to utilize the police in a civil action for the purposes of effecting or aiding private evictions or reinstatements.”

That being the position of the law as pronounced by the Court of Appeal I decline to grant the order sought.

Accordingly the plaintiff’s notice of motion is dismissed with no order as to costs.

Delivered and dated at Nairobi this 16th day of May 2008.

J. L. A OSIEMO

JUDGE