



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1027 of 2006

JOSEPH KARANI NGARI APPLICANT

VERSUS

HOUSING FINANCE CO. OF

KENYA LTD & ANOTHER DEFENDANT

RULING

I: BACKGROUND TO APPLICATION

1. The circumstances of this case is rather unusual. Joseph Karani Ngari the plaintiff herein claims that he has been on land parcel Mweru/Baricho/27 since 1960 and thus is entitled to a portion of the said land by way of adverse possession. He then filed suit Hccc 1015/06 on the 22 September 2006.

Joseph Karani Ngari

v

Christopher Mutheki Warui

2. Christopher Mutheki Warui is the current registered owner of the land parcel Mweru/Baricho/27. He is not party to this present suit Hccc1027/06. The plaintiff filed the present suit also but on the 27.9.06 five days later against the Housing Finance Co. of Kenya Ltd & Joseph Mungai Gikonyo t/a Garam Investments the 1st and 2nd defendant respectively. The 1st defendant loaned a sum of Ksh.200,000/- by way of mortgage to the registered owner Christopher Matheki Warui. It seems that when this loan was taken in 1988 the same was not paid and Christopher Mutheki Warui defaulted in making payments. The suit premises was therefore to be auctioned by the 2nd defendnt, an auctioneer so instructed.

3. The plaintiff filed this suit seeking a declaration that the 1st and 2nd defendant be restrained from selling the suit premises in question as the issue of adverse possession ought to be determined first in

HCCC 1015/2006 between him and the registered owner. He further prayed for an injunction restraining the defendant from selling the said suit premises.

4. An ex parte injunction was issued on 27.9.06 (duty Judge K. Kariuki J). Parties were not able to come for inter-parties hearing as further applications were filed by the respondents and further replying affidavit. The inter parties hearing was heard on 25 January 2006.

I: ARGUMENTS BY THE APPLICANT

5. That no sale of suit premises ought to occur until his rights to the premise suit land is determined.

5. In the case law of:-

Peter Thuo v Kiura Gathomo

Hccc (1988) 2 KAR III

And the case law

Githu v Ndete (1984) KLR 776.

Concerning adverse possession was referred to by the plaintiffs advocate.

II: ARGUMENTS BY APPLICANT

In reply the applicant was never in possession of the land. Valuers who went on the ground found workers houses; sheds for animals and the main house. The applicant ought to have applied for adverse position prior to the present registered owner.

III: FINDING

8. The plaintiff/applicants application is unique as it touches on the rights of a loan mortgaged to a third party not party to this suit. He indeed requires to protect his interest. The effect of this suit is indeed to stay any sale of the suit land. I require to determine whether the injunction orders given ought to be confirmed by this court or not?

9. I hereby do not grant the injunction as prayed as there is no merits in it. The application is hereby refused with costs to respondent.

Dated 31st day of January 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

D.G. Wachira for D.G. Wachira & Co. Advocates for the plaintiff

A.W. Gichuhi for Walker Kontos & Co. Advocates for the defendant.