

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 324 of 2006

1. Land and Environmental Law Division
- 2, Subject of main suit: Land
- i) Originating Summons seeking declaration that plaintiff/applicant is a purchaser for consideration of suit land and is the absolute owner
- ii) Injunction against defendant restraining them from interfering with his peaceful occupation
3. Application for injunction dated 30.3.06
- i) To restrain the defendants from interfering with the plaintiff/applicants peaceful occupation
- ii) There be a stay of proceeding in Meru RM's C 35/01 and Land Tribunal Case No. MWI/15/2000
4. Defendants including the Attorney General absent for inter-parties hearing. Proceeding continued under order 9b r 3 (a) Civil Procedure Rules
5. Arguments by applicant
- a) That he is the legal proprietor
- b) Seeks injunction pending hearing of originating summons
6. Held
- 6.1 Non disclosure of fact
- 6.2. That the application be and is hereby dismissed
- 6.3. The plaintiff to provide lists of all pending suits in Kenya touching on land or otherwise in question
7. Case law – Nil
8. Advocates
- A.N. Ndungu for Njugi B.G. & Co. Advocates for the plaintiff
- Abishagi Rufus – the defendant/respondent 1st respondent in person
- Llyod Mugendi Muketha 2nd respondent in person
- Mwimbi Land Dispute Tribunal 3rd respondent Attorney General

FRANCIS IRERI JOTHAMPLAINTIFF

VERSUS

ABISHAGI RUFUS

LLOYD MUGENDI MUKETHA

MWIMBI LAND DISPUTES TRIBUNAL.....DEFENDANTS

RULING

1: BACKGROUND

1: This is a land matter. Francis Ileri Jothan the plaintiff herein filed this originating summons on the 30.3.06 seeking orders to declare:-

1. 'That he is the absolute owner of land parcel Magutuni/555 (0.60 ha) issued to him on 22.2.00.

2. _____

3. An injunction to restrain
Abishagi Rufus,

LLyod Mugendi Muketha

and Mwimbi Land Dispute tribunal from interfering with his peaceful occupation of the suit land

4. That this court orders a stay of proceeding in the Meru RMs Court case No. 35/01 and

Mwimbi Land Dispute tribunal No.15/00.

2. On the same day of 30.3.06, the said plaintiff filed an application under a certificate of urgency seeking injunction on orders against the defendants whom he claimed were interfering with his peaceful occupation. He also wished to have a stay of proceeding of the court case.

3. The defendants filed no reply to the affidavit but they were served with the application. The 1st and 2nd defendant entered appearance in persons whilst the 2nd and 3rd respondent/defendants entered appearance through the Attorney General.

4. From the pleading before me, it appears that this has been along protracted suit. There is a larger family of the defendant whereby they appear to have transferred land to the

2nd adult grand children of the family. One of the adults grand children sold the land to the plaintiff. The family had all along stated that the land had been held in trust for them by the said grand children. The right to therefore sell the land was not therefore available to them.

5. I also noted that there has been no disclosure by the plaintiff/applicant on the number of the suit pending the suit land. Though the plaintiff mention Meru Rmc 35/01 and case MW11/15/00 there are cases in Meru, Nyeri, Embu and possibly Thika. There are proceeding before the Land Dispute Tribunal

6. The question arises as to whether this court should issue an injunction against the defendant?

II Findings

7. In the circumstances of this application and on non-disclosure of material fact I am not inclined to issue an injunction against the defendants. The plaintiff requires to make a list of all cases and or dispute existing in other courts in Kenya related to the suit land whether sub-divided or otherwise. That parties concerned to be indicated in order that they be notified of this suit and if they so wish be enjoined.

8. I hereby dismiss this application for an injunction. The above should be supplied at the directions on application under order 36 r 8(a) Civil Procedure Rules of the main suit by a further affidavit.

9. The costs will be in the cause.

Dated this 14th day of March 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

A.N. Ndungu for Njugi B.G. & Co. Advocates for the plaintiff
Abishagi Rufus – the defendant/respondent 1st respondent in person

Llyod Mugendi Muketha 2nd respondent in person

Mwimbi Land Dispute Tribunal 3rd respondent Attorney General