



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

Civil Case 618 of 2005

JOHM MAARA MUTURI PLAINTIFF

VERSUS

NJOROGE KAGUDNA 1ST DEFENDANT

NANCY WAITHERA 2ND DEFENDANT

JUDGMENT

ON FORMAL PROOF

1: Background Facts

1. The plaintiff herein married his late wife who was the original registered owner of Loc.2/Kangari/3540 in her own right. She had come into their marriage with her daughter Nancy Waithera (now married).

2. When the plaintiff's wife passed away her property that was registered in her name passed on to the plaintiff who benefited from it alone. The 2nd defendant was not happy with this. She was alleged to have been incited by her uncle, the 2nd defendant and is alleged to have made a false report to the police about him on forgery. There was no proof of this during the evidence of the plaintiff to court. The intention and prayers of the plaintiff was that the said 2nd defendant and her uncle be restrained from interfering, damaging, wasting and alienating the said land. That this injunction once issued be lifted by the OCS Kigumo Police station.

3. The defendant 1 and 2 on being served failed to enter appearance or file defence. The deputy registrar correctly declined to enter Interlocutory Judgment as under order IXa r 8 Civil Procedure Rules. The suit is to be set down for hearing. This was accordingly done.

4. At the trial the plaintiff and his witness asked that the said two defendants be restrained from interfering with the land. The cause of such interference alleges the plaintiff is that the 2nd defendant wants portion of the land although she is not entitled to the land as a married woman.

III: Finding

5. From the evidence before me the plaintiff is now the registered owner of Loc.2/Kangari 3540. He

is so registered as the owner as a result of his wife passing away. The said wife was the sole proprietor of the said land. She had her daughter the 2nd defendant whom she came to the marriage with. There most certainly must have been a succession cause. It shows that the said cause may not have taken the 2nd defendant into account. The grounds according to the plaintiff is that she is a married woman and is not entitled to the said land.

6. Although the 2nd defendant did not participate in these proceeding she is entitled to the said portion of land. To do this she requires to return to the succession cause case and identify herself as a beneficiary.

7. In the meantime I decline to grant the prayers for injunction. The police are not permitted to enforce court orders but are to provide security to such enforcement of the said court orders. I dismiss this suit with no orders as to costs as the defendants are absent.

Dated this 31st day of July 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

L.M. Kinuthia for L. Kinuthia & Co. Advocates for the plaintiff – present

Njoroge Kagunda & Nancy Waithera - defendants in person – absent