



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Civil Case 108 of 2006

PETER NGARI NYAGA.....APPLICANT

VERSUS

NYAGA NJAGI.....1ST RESPONDENT

SAMUEL NYAGA NGARI.....2ND RESPONDENT

PATRICK GACHOKI KIUGA.....3RD RESPONDENT

RULING

Application dated 14/2/2007 by the plaintiff seeks interlocutory restraining orders against the Respondents regarding the plot No. **Baragwe/ Thumaita/930** until further orders of this court. Also a restraining order is sought to restrain the defendants from selling or transferring parcels of land numbered **Baragwe/Thumuaita/2737** and 2738 until this suit is heard and determined. Plaintiff also seeks an order for an inhibition to be registered against the said titles. The application is based on grounds written on the application. The supporting affidavit sworn by plaintiff shows that on 6/1/1999 the first & 2nd defendant had caused the parcel No. Baragwe/Thumaita to be registered in their names and land sub-divided into two portions No.2737 and 2738. Thereafter the 2nd defendant transferred parcel No. 2738 to the third Defendant. The first Defendant states that the transactions complained of were in accordance with Judgment in ***Case No. SRM. CC 113 of 1990 at Kerugoya***. I have perused a copy of Judgment annexed and it appears to me that suit was in respect of plot No. 929 and 930. The court stated “**It is only fair that the plaintiff (Nyaga Njagi) can get title to land parcel No. 929 which he intended to be his. The defendant Peter Ngari should then move to parcel No. 930**”.

Upon consideration of the arguments on both sides and the affidavit sworn by all the parties it is my finding that there is legal issues to be decided in this matter. There is also matters of facts which need to be canvassed at a full hearing of this suit. The Plaintiff and his family reside on the suit land. The plaintiff pleads fraud. It is in the interest of justice that at this stage pending hearing of this application the subject matter of suit be preserved. At the moment the subject matter of the suit is the plots Nos. **2737 and 2738 Baragwe/Thumaita**.

I am satisfied that the balance of convenience tilts in favour of the plaintiff. The Judgment in the earlier lower court gave the plaintiff right to more and get title for plot No.930. This is contrary to what the Defendants say. The transactions therefore carried out by the Defendants are unlawful interfering with the plot No. 930.

I therefore find for the plaintiff's application is allowed and orders granted as prayed in prayer No 2 and 4 with costs to the Applicant/Plaintiff.

Dated this 27th September, 2007.

J. N. KHAMINWA

JUDGE

27/9/2007

Khaminwa – Judge

Njue – Clerk

Mr. Kathungu present

N/A

Read in open court

J. N. KHAMINWA

JUDGE