



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1204 of 2005

1. Land and Environmental Law Division – land
2. Civil Practice and Procedure – Land LR No. Dagoretti/Mutuini/96
3. Leave to enjoin the estate of:-

Naomi Nungari Nguthiru as second plaintiff

That amendment of plaint be accordingly allowed (7 June 2007))

4. None appearance of the defendant/respondents
5. Held:-
 - a) Application allowed as prayed
 - b) Amended plaint be served upon the respondent within 14 days of to days date
 - c) A reply to amended plaint be made by the defendants within 14 days of service
 - d) Costs be amended to be in the cause.
6. Case law
7. Advocate:

J.W. Kimeria for Wamahiu Kimeria & Co. Advocates for the plaintiff/applicant – present

M/s Kituku for Kituku & Co. Advocates for the 1st and 2nd defendants/respondent – present

PETER MUREGI NGUTHIRU PLAINTIFF

VERSUS

EDWARD MWAURA 1ST DEFENDANT

RULING

I: Application to enjoin the estate of the late Naomi Nungari Nguthiru as second plaintiff.

ii) That the averment of the plaint be accordingly allowed (dated 7 June 2006).

A) Background of application

1. The parties herein are tenants in common of land LR

No. Dagoretti/Mutuini/96 since 1971 when portion of the land was sold to Ms Gakunga Ngethe for Ksh.1,600/- and registered on

1 August 1968. This land subsequently passed on in October 1971 to the defendant and plaintiff as tenants in common being:-

1.1 Edward Mwaura & Edward Karanja 6/23

Undivided share

1.2 Nungari Nguthiru - 4/23

Undivided share

1.3 Muregi Nguthiru - 4/23

Undivided share

1.4. Gakunga Ngethe - ½

Undivided share

2. They were all described as proprietors in common – noting that Edward Mwarua and Edward Karanja hold only one and not two portions.

3. Some of the parties have since died. Edward Mwaura and Edward Karanja brought in surveyors and sub-divided the land without the clear knowledge of the plaintiff. The plaintiff filed suit and claimed that his portion of land was illegally being alienated. The defendants on the other hand said the portion alienated was a road reserve.

4. The court declined to issue an injunction (Mugo J 21 July 2006) and or contempt proceedings. Earlier orders of status quo was granted (Kubo J) (27 February 2006).

5. The parties have been to the magistrate's court at Kibera concerning a case of forgery.

II: Application 7 June 2007.

6. The defendants/respondent being served through their advocate have failed to appear to court for the hearing of the application to enjoin the proposed plaintiffs' late estate to this suit. The matter preceded under order IX (b) r 3 a Civil Procedure Rules. That the court being satisfied, service was effected and the respondent are absent proceeded to hear the application ex parte.

III: Finding

7. Although this court does not entirely agree with the procedure method of coming to court by the applicant, it will

None-the-less permit the plaintiff to be enjoined.

8. That leave be and is hereby granted for the estate of Naomi Nungari Nguthiru to be enjoined to this suit as the second plaintiff.

9. That the plaint be amended accordingly, filed and be served upon the respondents within 14 days of to days date.

10. That a reply to amend the plaint by the respondent be filed within 14 days of service.

11. The costs of this application be in the cause.

Dated this 8th day of October 2007 at Nairobi

M.A. ANG'AWA

JUDGE

J.W. Kimeria for Wamahiu Kimeria & Co. Advocates for the plaintiff/applicant – present

Kituku for Kituku & Co. Advocates for the 1st and 2nd defendants/respondent – present during reading of ruling only.