



REPUBLIC OF KENYA

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

Civil Case 164 of 2005

1. Land and Environmental Law Division

2. Subject of main suit: Injunction

1: Land

LR Kiambaa/Kihara 1023 originally

LR Kiambaa/Kihara 389

Kihara 389

3. Application 15 February 2005 – Injunction

Respondent absent

Consent dates taken

4. Held: The injunction is not granted.

5. Case law - Nil

6. Related case

Muchuru Mumbura v Peter Kamau Chege

Hccc No.1654 of 1994, Hayanga,J.

7. Advocates:

C.N. Gitama of Ndungu Githuka & Co. Advocates for the plaintiff/applicant-present

E. Muigai of E. Muigai & Co. Advocates for the defendant/respondent - present

MUCHUNU MUMBURAPLAINTIFF

VERSUS

WAMAITHA CHEGE1ST DEFENDANT

RUGURU CHEGE2ND DEFENDANT

RULING

I: Background

1. This is an application dated 15 February 2005 seeking an injunction against the two defendant/respondent herein.
2. On the day called out for hearing the two respondents and their advocates were absent. The dates had been taken by both advocates for hearing inter parties. The court proceeded the hearing with the plaintiff above under order IXb r 3(a) Civil Procedure Rules.
3. In brief, the plaintiff Muchunu Mumbura (now) deceased had filed a suit against one Peter Kamau Chege seeking for orders of this court that he had acquired land parcel Kiambaa/Kihara 1023 originally Kiambaa/Kihara 389 by way of Adverse Possession. This suit was filed in the High Court of Kenya Hccc1654/94 and which was determined by Hayanga J on the 17 May 1995. The Land parcel LR Kiambaa/ Kihara 1023 was declared to no longer belong to Peter Kamau Chege but to Muchunu Mulwa the plaintiff that and orders that he be registered was issued.
4. A notice of appeal was filed but it was never perused. Part of the reasons being that Peter Kamau Chege passed away. His relatives perhaps out of anger moved onto the land and began to interfere with it by cultivating the same.
5. The plaintiff, Muchunu Mumbura filed this suit before the court seeking orders of injunction to restrain the said parties from interfering with his possession of the 1.5 acres of land he held. It was on 2 March 2005 that the plaintiff soon passed away after filing this suit on 15 February 2005. The suit abated on 1 March 2006.
6. His daughter Jane Muchiru filed an appearance of 12 April 2006 seeking for the suit to be reinstated for hearing. The defendants objected. In a ruling of 20 February 2007 Aganyanya J heard the application in which he permitted the daughter to revive the suit and to thereafter be permitted to be enjoined to the suit as a party (Jane Muchiri had three different "alias" names).
7. After this application was successful, the said new applicant/plaintiff returned to the injunction application filed two years earlier which is the subject matter of this suit being
15 February 2005 application.

II: Application 15 February 2005.

8. Two years has gone by? It is unclear whether injunction orders are still required. The applicant seeks that she be granted these orders. The likelihood of being intimidated again was real. These orders are the same as prayed in the plaint.
9. I would not grant the application for injunction as prayed till the determination of the main suit. I order that the proceeding be amended to be in line with the ruling of Aganyanya, J (which ruling substituted the parties herein) by way of appropriate amendments.
10. There will be no costs orders to the applicant to be paid by the respondents.

Dated this 15th day of November 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

C.N. Gitama of Ndungu Githuka & Co. Advocates for the plaintiff/applicant-present

E. Muigai of E. Muigai & Co. Advocates for the defendant/respondent - present