



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL CASE 33 OF 2007

ARCHIBALD WAMBURU KAHORA.....PLAINTIFF

VERSUS

BENSON N. THIGA & 9 others.....DEFENDANT

RULING

The plaintiff has filed this plaint which was amended on 23/7/2007 against all 10 named defendants.

All defendants are represented by one advocate Mr. Njiru Mbogo Esq. There is an application dated 23/7/2007 by the plaintiff and another dated 27/7/2007 by Defendants seeking to vacate interim orders granted to the plaintiff under certificate of urgency *ex parte*. Both applications were argued together. The background of the plaintiff's application is the pleaded facts in the amended plaint. It is pleaded that the first Defendant and one Kabira Muita were the owners of piece of land Ngandori/Kirigi/1363. The first Defendant owned 4 acres and the said Kabira Muita owned five acres. The plaintiff purchased five acres from Kabira Muita and paid full purchase price Shs.225,000/=. Later plot No.1363 was partitioned into 2 subdivisions, Plot No.6467 with the said Kabira Muita. Land Board Consent to their transfer was not obtained and the said Kabira Muita died on 26/1/2006 before the plaintiff's transaction was finalized. Later the surviving owner cancelled the subdivision above mentioned and restored the original No.1363. And also the survivor caused the name of deceased co-owner to be removed from the register so that the 9 acres of land remained in the name of first Defendant. And the first Defendant obtained Land Board Consent to subdivide the said 9 acres into 43 portions (plots). This consent was obtained 5 months after the death of deceased Kabira. It is pleaded fraud in the first Defendant's actions. And the first Defendant has sold of piece of the land to the other defendants without making any provision for plaintiff who says he will suffer loss of the five acres which have now been subdivided and given new numbers 7950 to 7988. He claims that they be excised from the other lands and be registered in his plaintiff's name.

By Chamber Summons dated 23/7/2007 seeks restraining orders against the 10 defendants pending hearing and determination of this suit and an order for inhibition to be registered against the disputed pieces of land to inhibit all dealings with the land titles pending hearing of this suit. The grounds on which application is made are stated. The application is also supported by affidavit of the plaintiff with annexures. Exhibit A WK 1 shows that on 3/3/87 the land Ngandori/Kirigi 1363 was registered in the names of Kabira Maita as owner of 5/9 shares and Benson Njage Nthiga of 4/9 shares. Exhibit AWK 2 (c) is a copy of sale agreement dated 28/5/1992. Between Plaintiff and Kabira Muita wherein the plaintiff purchased the interest 5/9 of Kabira in the plot 1363 for shs.225,000/-. The plaintiff was given possession of 5 acres after execution of the said agreement. The evidence of the death of said Kabira is exhibited as occurring on 26/1/2006. The issue of Land Board consent appeared in the minutes of the Board held on

27/6/2006 as item 63 and was approved namely transfer by Kabira Muita and Benson Njage to Benson Njage Thiga first Defendant and on same day consent to subdivide to 43 pieces was granted. By annexure AWF 2 (a) the first defendant was aware that the plaintiff had purchased 5 acres out of the plot since 20/9/1990. The application is opposed by affidavit sworn by first Defendant on 27/9/2007. The first Defendant swears that there has been previous proceedings in **Senior Resident Magistrate Embu CR. C.M's Case No.350 of 1992 and Embu High Court Civil Case No.16 of 2002**. The court has noted that these proceedings were between the first Defendant and the said Kabira Muita and the Judgments/orders issued by competent courts indicates that the original land 1363/Ngandori /Kirigi were in favour of the first Defendant.

It is therefore clear that the plaintiff has no claim against first Defendant in respect of the land in dispute. The important point to be made here is that plaintiff admits that his transaction with the deceased was never blessed with Land Control Board Consent. Therefore it is against the provisions of Land Control Act.

I do not find any prima facie case demonstrated by the plaintiff and orders of injunction and inhibitions are not warranted. The application is therefore rejected. The application by the Defendants seeks orders against the plaintiff to discharged exparte orders. The same has been overtaken by events.

Costs shall be in cause in respect of both applications.

Dated this 14th December, 2007.

J. N. KHAMINWA

JUDGE

14/12/2007

Khaminwa – Judge

Njue – Clerk

Mr. Mbogo

N/A for Okwaro

Read in open court.

J. N. KHAMINWA

JUDGE