

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

Civil Suit 12 of 2006

KOKAN NYAISAI OLE KINYANJUI.....PLAINTIFF/APPLICANT

VERSUS

MARGARET MUTHONI KIRONYI.....DEFENDANT/RESPONDENT

R U L I N G

This application was dated 13/2/06 and was filed in this court on the same date. In it the applicant/plaintiff, seeks an order to discharge the caution and order registered against Land Parcel No. Kajiado/Kisaju/2474, respectively. It also seeks a temporary injunction restraining the defendant/respondent from interfering or in any way trespassing upon the said piece of land until the hearing and final determination of this suit. Other orders sought and granted on 13.2.2006 included an order dispensing with service in the first instance, certifying the application to be urgent and issuing an interim injunction until the hearing of the application interpartes.

When the application came up for interpartes hearing on 24.3.06, the respondent/defendant was absent. It was indicated that she had been served with the application on 28.2.2006 but that she had declined to sign or acknowledge receipt of the suit document. An affidavit of service had been properly filed to that effect. The applicant who sought to prosecute the application exparte in those circumstances, was allowed to do so.

No replying affidavit or grounds of opposition had been filed to the facts deponed in the supporting affidavit by the applicant.

The applicant/plaintiff's case was that he was the registered owner, under Registered Land Act, Cap 300, of a parcel of land known as L.R.No. Kajiado/Kisaju/2474 since 17.4.2002. The subject land had been in dispute between the plaintiff and defendant but Rift Valley Land Disputes Tribunal in Case No. 10 of 2002 ,awarded it to the plaintiff before it was then registered in the plaintiff's name. On 29.4.2002 the defendant moved in and registered a caution upon the land. On 14.11.2002 she again registered what purported to be a court injunction which stated that it would last for a period of 45 days from the date of registration. The applicant stated that the said court order did not carry the case number nor the court where it was issued. The effect of the caution and the purported court order was however to completely restrict the plaintiff from dealing with the land as he wished. Asked why he could not apply to the Land Registrar at Kajiado to remove the caution and the court order from the title, he said that this attempt to do so had hit against a wall, thus driving him to file this suit and these applications.

I have examined the official search certificate in relation to the said piece of land. It shows the order of injunction issued on 4/11/2002 "restraining the respondent (plaintiff herein) agents, servants from interfering with the land till determination is extended for 45 days from 11/11/02". It is possible to read this entries to mean that the injunction was originally to be standing until determination of whatever suit under which it was issued, before the same was extended to cover a period of 45 days from 11/11/02. Whatever may be the meaning of the said entries, the defendant was entitled to come to court and defend the application seeking removal of the caution and order. She failed to do so despite being served with the suit and application documents.

On the other hand the plaintiff is the registered owner of the piece of land in question. He seeks the removal of the entries which fetter his rights over the piece of land. The order of court and sought to be

discharged appears quite dubious on the face of it as it does not show its origin. Further more the purported order of court was on its face intended to last for 45 days from 11/11/2002 which date expired over 2 years ago. Indeed it can be argued that the court order, if a court order it was, is of no effect after it exhausted itself 45 days after it took effect on 11.11.2002. Clearly what the Land Registrar required in order to remove it was to have it declared as exhausted so that he could then lift it. I see no reason not to do so

For the above reasons therefore the orders following are issued:-

ORDERS:-

- a) That pending the hearing and determination of this suit an order is hereby issued discharging the caution and the purported order of court registered against L.R. No. Kajiado/Kisaju/2474 on 29/4/2002 and 14/11/2002, respectively.
- b) That the defendant/respondent, her agents, servants and/or assigns, be and are hereby restrained by way of injunction from interfering or in any way trespassing on the said L.R. No. Kajiado/Kisaju /2474 until the hearing and final determination of this suit.
- c) Costs are to the applicant/plaintiff.

Dated and delivered at Machakos this 24th March, 2006

D.A.Onyancha

JUDGE