

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Case 13 of 2004

LYDIAH MURUGI PLAINTIFF

VERSUS

EPHRAIM K. WAMBUGU

KARIUKI M. WAMBUGU

EPHRAIM G. KABUNGO

PETER W. MAINA

THE REGISTERED TRUSTEES) DEFENDANTS

RULING

By an application dated 28th November 2005, Lydia Murugi (hereinafter referred to as the Plaintiff/Applicant) seeks an order of injunction under Order XXXIX rules 1, 2, & 3 of the Civil Procedure Rules directed against Ephraim K. Wambugu, Kariuki M. Wambugu, Ephraim G. Kabungo, Peter W. Maina, The Registered Trustees of Wambugu Farm (hereinafter referred to as the Defendants/Respondents) restraining them from alienating selling or in any way expending on the proceeds, profits or other monetary gain from land parcel No. Aguthi/Gatitu/3446 and Aguthi/Gatitu/3447. The applicant maintains that she is a beneficiary to the trust of which the Respondents are trustee. By an originating summons which has been filed in this case the applicant seeks to have the trust determined and the trust property which comprise of Aguthi/Gatitu/3446 & 3447 distributed amongst the Beneficiary. It is the applicant's contention that unless an order of interlocutory injunction is granted against the Respondent they may alienate the suit land and use the proceeds of the trust to the detriment of the applicant.

Two of the Respondents Ephraim K. Wambugu and Peter W. Maina concede that the applicant is indeed a Beneficiary to the trust. They therefore have no objection to the application. However the other two i.e. Kariuki M. Wambugu and Ephraim G. Kabungo maintain that the applicant is not a Beneficiary to the trust and is therefore not entitled to any of the trust property. It is further contended that Ephraim K. Wambugu one of the named trustee who has conceded to the application has in fact been replaced as a trustee.

Having considered the application and the affidavit in support and in reply as well as the originating summons, I am satisfied that the subject matter of the suit filed by the applicant is the trust property in respect of the Wambugu trust. Although there is an issue as to whether the applicant is a beneficiary of the trust, that issue can only be determined when the originating summons is heard. The applicant has satisfied this court that she has a prima facie case as two of the Beneficiaries support her claim. It is evident that the Respondents are in control of the trust property. The fear that the property may be disposed off is not far fetched as the letter dated 5th October 2005 from the Ministry of Agriculture (annexed to applicants affidavit) is clear evidence that the Ministry is interested in purchasing the property. I am satisfied that the applicant is likely to suffer substantial loss if this happens. It is therefore important that the court preserves the subject of the suit. I do therefore grant the Chamber Summons dated 28th November 2005 and issue orders as prayed in prayer (b) & (c).

Costs of the application shall be costs in the cause.

Dated signed and delivered this 5th day of April 2006

H. M. OKWENGU

JUDGE