

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

Civil Suit 142 of 2005

PASTINA WAMALWA SIMIYU PLAINTIFF.

VERSUS

STEPHEN WEKESA

SILAS WANYONYI

ROBERTY MIRUNI DEFENDANTS.

JAMES ALWENYI IDACHI

R U L I N G.

I have considered the Preliminary objection raised by Mr. Onditi on behalf of the Respondents in the application dated 27/10/2005. I have considered the arguments advance by both counsel and the annexures herein and the cited authorities.

First and foremost, the Registration of plot Nos. KAKAMEGA/KONGONI/1023, 1025 and 1026 is not a first Registration. Those plots had been sub-divided from original Title No. KAKAMEGA/KONGONI/197, which had been registered in the name of the plaintiff/applicant's wife. These Titles can therefore be lawfully challenged in a court of law. Whether there was fraud or not would be a question of evidence which would be subjected to the usual burden of proof.

I have also seen the annexed copy of a Grant of letters of administration giving the plaintiff the locus standi to sue on behalf of the Estate of her late husband. She is therefore properly before the court. Locus standi does not necessary mean that she has a right recognisable in law over the said property. That again is a matter of evidence. In other words, there are serious disputed or arguable issues in this matter, which can only be resolved by way of calling evidence. A preliminary objection is not therefore the best way to resolve this matter. Let the parties have their day in court. Let them have a chance to ventilate their claims. Whether their claim is good or bad in law will ultimately be decided after the case is heard. In the result, I dismiss the preliminary objection dated 11/11/2005 with costs in the cause.

Nonetheless, I have seen the eviction order issued by this court on 20/6/2005. That eviction order is still a valid order of this court. The same has not been set aside either by this court or by an appellate court. The same is therefore still enforceable. The plaintiff in Civil Suit No. 71 of 2001 is at liberty to proceed with the execution of the same. That plot will not be affected by the pendency of the application dated 27/10/2005, which is yet to be heard.

W. KARANJA.

JUDGE.

Delivered, dated and signed at Kitale this day of April, 2006 in the presence of:-