



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Suit 71 of 2005

SAMUEL WAGORO NGUGI PLAINTIFF

VERSUS

NICODEMUS HONGO OMOGO DEFENDANT

RULING

Samuel Wagoro Ngugi who claims to have been registered as proprietor of all that land which is known as Eldoret Municipality Block 5/60/1 (“subject property”) on 13/4/2005, having purchased it at a public auction, at the behest of Kenya National Assurance Company Limited (“KNA”) on 19/1/2005. He filed this suit on 8/8/2005 against Nicodemus Hongo Omogo who as the original owner had charged it KNA but who it is claimed, has refused to vacate the premises. Ngugi sought inter alia for permanent orders to restrain the said Hongo for occupying or using the said property in any manner. He also sought an order for the eviction of the said Hongo.

In his defence, Hongo pleaded that there existed an injunction restraining KNA from disposing of the subject property and avers that there is no privity of contract between him and Ngugi. He also alleges that Ngugi and KNA acted fraudulently by having the property sold at an under value on the basis of which he has counterclaimed, all of which claims have been denied by Ngugi.

Omogo has now moved this Court in an application taken out under Order 1 rule 14 and Section 3A of the Civil Procedure Act (“CPA”). He seeks an order to enjoin the District Land Registrar Uasin Gishu District and KNA as parties to the suit. He bases his application on the grounds that he is the registered owner of the subject property; that the two parties who he intends to have joined to the suit have caused the title to issue to Ngugi and that the matter cannot be adjudicated upon without their being enjoined as parties to this suit.

Records availed by Omogo tend to show that the said District Land Registrar who had not taken the order of injunction into account, entered the transfer to Ngugi in his register and issued the relevant Certificate of Lease on 13.4.2005, but upon noticing that there existed orders restraining him from registering the transfer to Ngugi, he reversed the entries 10.5.2005. Ngugi was made aware of the restoration on 10/5/2005, when he was informed that the Certificate of Lease which had been issued in his favour had in the circumstances been cancelled. He filed this suit three months after the date of the said notice.

Order 1 rule 14 (1) of the Civil Procedure Rules under which this Court is moved, stipulates that:

“14. (1) *Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)-*

(a) that he is entitled to contribution or indemnity;

or

(b) that he is entitled to any relief or remedy

relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) that any question or issue relating to or connected

with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them, he may, by leave of the court, issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.”

I have taken the submissions of both counsel into account and in view of the fact that the entries in the Register were reversed, which in essence means that the Ngugi is no longer “the registered” proprietor of subject parcel. It is in my view important that KNA which was the chargee of the property at the material time and the aforementioned Land Registrar, be enjoined to this suit as parties so that the issue of the ownership be adjudicated upon fully and determined to a finality.

I do in the circumstances grant the applicant an order in line with his prayer (a) save that they will be joined as third parties upon whom summons and plaint should be served within the next fourteen (14) days.

Dated and delivered at Eldoret this 3rd day of May 2006.

JEANNE GACHECHE

Judge

Delivered in the presence of:

No appearance for either party