

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI
Misc Appli 66 of 2004

SIMON NDUNG'U

JOSEPH WAWERU..... APPLICANTS

VERSUS

KANGATHIA KIUNA RESPONDENT

RULING

By a Chamber Summons dated 26th April 2004, Joseph Waweru the 2nd applicant seeks orders for a:

“permanent injunction restraining the Respondent, his families, servant’s and or agents from harassing, arresting, executing and or filing unnecessary cases in Kiambu or any other court in Kenya as he is doing and especially the SRMCC No. 146 of 2003 Kiambu now fixed for hearing on 29th April, 2004 which is contrary to section 7 of the Civil Procedure Rules during the pendency of the applications and the intended appeal before this court.”

The application is brought under Order XXXIX rules 1 & 2 and section 3A of the Civil Procedure Act and is supported inter alia by a lengthy affidavit sworn by the applicant.

From the affidavit it is apparent that the applicants and the Respondents have had a dispute over land known as land parcel No. Gatamayu/Kagwe/ 1067 which was registered in the name of the applicant’s father and which the applicant’s father sold to the Respondent against the applicant’s wishes. The applicants objected to the sale and unsuccessfully filed a dispute at the Kiambu Land Dispute Tribunal, the Central Province Appeals Tribunal and Nyeri High Court Misc. application No. 191 of 1999.

The Respondent has now filed a suit in SRM’s Court at Kiambu (Civil Suit No. 146 of 2003) seeking special and general damages from the applicants arising from the court cases that the applicants have brought against him. It is this suit that is the subject of the permanent injunction sought by the applicant.

It is apparent that this application cannot lie under Order XXXIX rules 1 or 2 as those rules provide for temporary and interlocutory injunctions only and not a permanent injunction as sought by the Applicant. Secondly the rules provide for the granting of a temporary or interlocutory injunction in cases where any property in dispute is in danger of being wasted, damaged or alienated or for the purposes of preventing the Respondent from disposing his property with a view to delaying or obstructing justice or to restrain the Respondent from committing a breach of contract or other injury of any kind.

The application before me does not fall under any of these circumstances. The Respondent has merely brought a suit against the applicants seeking damages. If the applicant feels that the suit ought to be started or terminated the applicant can appropriately move the court dealing with the suit for whatever orders that may be appropriate. This court cannot interfere with the Respondent’s right to file a suit. Moreover the court cannot issue an injunction generally restraining the Respondent from generally filing cases against the Respondent.

The upshot of the above is that the application before the court is incompetent and misconceived. It is accordingly dismissed. I make no orders as to costs.

Dated this 25th day of October 2006.

H. M. OKWENGU

JUDGE