



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 649 OF 2011

SAMUEL NGUGI KARUNGU.....1ST PLAINTIFF

ESTHER WAMBUI NGUGI2ND PLAINTIFF

DAVID NGINYI NGUNYI.....3RD PLAINTIFF

- VERSUS-

ESTHER WANGECI CHEGE NG'ANG'A.....DEFENDANT

RULING

1. This is the notice of motion dated 29th November 2019 brought under Section 1A, 1B (1) 3, and 3A, order 22, 29 (1) (2) and all other enabling sections of the law.
2. It seeks orders:-
 1. Spent.
 2. Spent.
 3. That the local Chief Kibiria and the Officer in Charge of station Dagoretti/Waithaka (OCS) do assist parties in keeping the peace when subdivision of the portion of land is executed.
 4. That the District Land Surveyor Nairobi be the one to carry out the survey works to apportion the portion of land under question between the parties.
 5. That the costs of this application be in the cause.
3. The grounds are on the face of the application and are set out in paragraphs (a) to (L).
4. The application is supported by the affidavit of Esther Wangeci Chege Nganga the defendant/applicant sworn on the 28th November 2019 and that of Sarah Waithira Kiarie, widow of the late George Kinyanjui Chege sworn on the 28th November 2019.
5. The application is opposed. There is a replying affidavit sworn by David Nginyi Ngunyi, the 3rd plaintiff/respondent sworn on the 24th February 2020.
6. On the 7th July 2020, the court with the consent of parties directed that the application be canvassed by way of written submissions.
7. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit and the written submissions filed on behalf of the parties. The issue for determination is whether this application is merited.
8. This court in its judgment delivered on 24th October 2019 observed in paragraph 9:-

“It is clear that the plaintiffs are occupying a portion of the suit land. This is the portion they are entitled to”.

This court went further to grant orders that:-

“(a) A declaration is issued that the defendant has always held a portion of plot number Dagoretti/Waithaka/562 in trust for the plaintiffs and therefore the plaintiffs are entitled to the said portion out of the said land”.

These are the orders granted by this court on 24th October 2019.

9. I find merit in this application and grant the orders sought namely:-

- a. That the local chief Kabiria area and the officer in charge of Station Dagoretti/Waithaka do assist parties in keeping the peace when subdivision of the land is executed.**
- b. That the district land surveyor, Nairobi be the one to carry out the survey works to apportion the portion of land under question between the parties.**
- c. Each party do bear own costs.**

It is so ordered.

Dated, signed and delivered in Nairobi on this 25th day of February 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the plaintiffs

Mrs. Muigai for the defendant

Phyllis – Court Clerk