

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPLICATION NO. 201 OF 2000

MARY WANJIRU NJUGUNA APPLICANT

VERSUS

REPUBLIC RESPONDENT

CONSOLIDATED WITH

CRIMINAL DIVISION

CRIMINAL APPLICATION NO. 202 OF 2000

NJUGUNA NJOROGE APPLICANT

VERSUS

HON. THE ATTORNEY GENERAL RESPONDENT

R U L I N G

Criminal Application No. 201/2000 has been consolidated with Criminal Application No. 202/2000.

The 2nd applicant, NJUGUNA NJOROGE and the 1st applicant, MARY WANJIRU NJUGUNA, are husband and wife respectively. They are jointly charged before the Chief Magistrate's court in Criminal Case No.787/2000 with various offences relating to a house in Umoja I Estate, Nairobi formerly known as Umoja 1 – D 84 which belonged to the 2nd applicant, NJUGUNA, which he later sold to one JOSEPH MURIITHI NJERU, the complainant in the said Criminal case for Kshs.530,000/=.

When MARY WANJIRU (1st Applicant) learnt of the said transaction between her husband and Joseph Muriithi Njeru without her consent she moved to the High Court in Civil Case No.5913 of 1993 against her husband and High Court Civil Case No. 4539/94 against Joseph Muriithi Njeru to have the said transaction set aside. She obtained a decree in her favour whereupon the said property was registered in her name and she was issued with a lease for 99 years by the Nairobi City Council in respect of that property registered as TITLE NO. NAIROBI/BLOCK 109/1/346. She then sold the said property to one SARAH KEMUMA OSIEMO for Kshs.950,000/= who took possession of the said house and is in occupation of the same upto this day.

In the meantime, JOSEPH MURIITHI NJERU, the complainant in the Criminal Case, acting on his earlier sale agreement with NJUGUNA in respect of the said property, managed to challenge the lease issued to MARY WANJIRU by the Nairobi City Council. The Council then revoked the said lease and caused a new lease in respect of the said property to be issued in his favour as TITLE NO: NAIROBI/UMOJA BLOCK 109/268/346. He then charged the said property with a Bank and obtained Kshs.100,000/=. Thereafter he commenced the criminal proceedings against the 1st and 2nd respondent.

The position of the Attorney General with regard to the pending criminal case against the 1st and 2nd applicants has been clearly stated before this court by Mr. Horace Okumu, the Learned Senior Principal State Counsel. He told the court that after the said charges had been preferred against the applicants in the Chief Magistrate's Criminal Case No. 787/2000, the Attorney General called for the police file for perusal and advice. The same was perused by the learned Director of Public Prosecutions, Mr. Bernard chungu (now Chief Justice) who advised that the complainant, Joseph Muriithi Njeru that he should should pursue

his remedy in a civil court. It was not the intention of the Attorney General that the state should pursue the criminal proceedings against the two applicants, Mr. Njuguna Njoroge and his wife Mary Wanjiru on the available evidence as contained in the police file. Mr. Okumu was at a loss as to how the said charges came to be preferred against the applicants. He had this to say:-

“The former D.P.P advised that the complainant should persuade a civil remedy in court. How these charges came to be preferred by the police against the applicants I cannot understand”.

I have considered all the matters that were urged before me in the affidavits of the parties and counsel submissions. I am satisfied that the dispute revolving upon the ownership of the property formerly known as UMOJA 1-D-84 is essentially a civil matter between all the parties involved and that the Criminal Jurisdiction of the court has been improperly invoked by the police. Indeed there are before the High Court Civil Suits No.5913/93 and 4539/94 where the matters in dispute can be ventilated and resolved.

For reasons stated, I allow the respective applications filed by the applicants on the 29th of June, 2000 and do hereby grant a prohibiting order restraining the Chief Magistrate, Nairobi or any other Magistrate from hearing or in any manner further entertaining Criminal Case No. 787 of 2000, Republic vs Njuguna Njoroge and Mary Wanjiru Njuguna.

It is so ordered.

Dated and delivered at Nairobi this 30th day of May, 2001.

S.O OGUKE

JUDGE