

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 456 OF 2001

PETER NDUNGU NJENGA PLAINTIFF

VERSUS

JOHN K. NDUNGU & 4 OTHERSDEFENDANTS

R U L I N G

Two main prayers in the suit filed herein on 21st March, 2001 by the plaintiff against the defendants are for:-

(a) an order for the removal of cautions placed on Land Parcels Nos. LR.NGONG/NGONG/3949 and KAJIADO/NGONG/432. and

(b) an injunction perpetually restraining the defendants whether by themselves, their servants, agents or otherwise from interfering, stopping, dealing in, or in any other manner compromising the absolute right of title of the plaintiff.

Then on 18th April, 2001 the same plaintiff files an application by chamber summon under Section 133 of the Registered Land Act, Chapter 300 Laws of Kenya to apply for similar order as per prayer 1 of the suit on the grounds that the plaintiff applicant is the registered absolute owner of L.R No. NGONG/NGONG/394 and KAJIADO/NGOGN/342, that the respondents on 2.2.2001 placed cautions prohibiting any dealings in both parcels of land claiming beneficiaries interest and that there is no suit by the respondents.

The applicant, apart from citing Section 133 of the Registered Land Act also cites sections 3 and 3A of the Civil Procedure Act which provides for a saving of special jurisdiction and orms and/or interest powers of the court.

The applicant also talks of all other enabling provisions of the law but does not say which these other provisions of law are.

Section 133 of the Registered Land Act deals with the withdrawal and removal of caution by the Registrar (see meaning in Section 3 of the Act), and has no provision of courts intervention in respect thereof.

As regards the application, I am not convinced once a suit is filed in court for this relief a party can seek the same relief by way of chamber summons.

Counsel for the applicant said nothing about this initial issue and in particular did not cite any authority or legal provision which allows to seek this relief by way of chamber summons.

At the same time, even if such provisions exist, I do not understand why the applicant should come for this relief in a hurry rather than wait for both reliefs sought in the plaint to be decided together once and for all.

I am not quite happy that full grown children should be drawing their parents into such litigations like the present one rather than busy themselves with some occupation to acquire their own property but I have no basis upon which I should consider this application in favour of the applicant.

I dismiss the same but order each party to bear his/their own costs thereof.

Delivered, dated and signed this 18th day of June, 2001.

D.K.S AGANYANYA

JUDGE