REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND COURT

ELC. NO. 264 OF 2012

JOAN WAIRIMU MBUTHIA ……..……..……..1ST PLAINTIFF

DANIEL SAMSON MBARATHI……..…..…….……..2ND PLAINTIFF

VERSUS

PENINAH WANJIKU MUGO…….…….....……..….. DEFENDANT

RULING

Coming up before me for determination are two applications as follows:

1. Notice of Motion dated 18th March 2014 by the Intended Interested Parties (hereinafter referred to as the "First Application).
2. Notice of Motion dated 5th May 2014 by the Plaintiffs/Applicants (hereinafter referred to as the "Second Application").

In the First Application, the intended Interested Parties sought the following orders:

1. Spent
2. That leave be granted to David Mbugua Njoroge, Leah Njeri Njoroge and Geoffrey Mugo Njoroge (acting as administrators of the late Lucy Wanjiku Njoroge) to be joined as interested parties to this suit.
3. That there be an immediate stay of execution of the Decree issued on 14th June 2013 by Justice Gitumbi and the Plaintiffs, their agents or servants be restrained from evicting or in any way interfering with the Interested parties' possession of Dagoretti/Thogoto/2869 (hereinafter referred to as the "suit property") pending the hearing and determination of this Application, the suit or further orders.
4. That the Decree issued on 14th March 2013 be set aside and the interested parties be allowed to file a Defence/Counterclaim and matter proceed to full hearing.
5. That costs be provided for.

The First Application is supported by the grounds appearing on the face of it together with the Supporting Affidavit of David Mbugua Njoroge, Leah Njeri Njoroge and Geoffrey Mugo Njoroge sworn on 18th March 2014 in which they averred that they are siblings and administrators of the estate of the late Lucy Wanjiru Njoroge who was their mother. They further averred that a notice to vacate was issued to the

Defendant on 11th March 2014 relating to the suit property. They further averred that the Defendant is their maternal grandmother who after their mother's death was left in custody of the original title deed for the parcel of land known as Dagoretti/Thogoto/2132 which was subsequently subdivided to various parcels including the suit property. They further averred that in 2011 the Defendant fraudulently transferred the said title to herself and sold to the Plaintiff the suit property. They further stated that for the last 30 years they have resided on the suit property with the Defendant. They also stated that they subsequently came to learn that the Defendant was served with eviction orders and that upon perusal of the court file, they discovered that an ex-parte decree had been issued against the Defendant. They claimed to be entitled to the suit property.

The First Application is not opposed.

In the First Application, the intended interested parties concede that judgment has been entered in this suit and a decree issued for purposes of execution. Indeed, judgment was entered herein on 20th December 2013 in favour of the Plaintiffs. The matter is now at the execution stage. However, the intended interested parties seek to be enjoined herein, for a stay of execution and for the setting aside of the decree. They basically seek for this court to reopen this case so that they can bring their case forward in their claim over the suit property. To my mind, I have not been shown any law or legal authority that allows for such prayers. In the First Application, the Applicants relied on **Order 1 Rule 10(2) of the Civil Procedure Rules, 2010**. However, that provision allows the joinder of a party to the suit before judgment is entered and not after the judgment has been entered. They further rely on **Order 22 rule 22** which does not also allow for what the Applicants are requesting. Neither does **section 3A of the Civil Procedure Act** nor **section 152 of the Land Act** permit the Applicants' prayers to be enjoined herein. My finding is that the intended interested parties may not be enjoined into this suit after judgment has been entered and all their other prayers cannot be granted as they are non-parties to this suit. To that extent therefore I hereby dismiss the First Application with costs to the Plaintiffs.

In the Second Application, the Plaintiffs/Applicants seek for the following orders:

1. Spent.
2. That this honourable court be pleased to review its judgment delivered on 20th December 2013.
3. That this honorable court be pleased to granted the Plaintiffs' an order of vacant possession over the suit property.
4. That this honorable court do issue and eviction order to the Applicants
5. That the costs of this Application be provided for.

The Second Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the 1st Plaintiff, Joan Wairimu Mbuthia, sworn on 5th May 2014 in which she averred that in the judgment of this court delivered on 20th December 2013, the Court inadvertently failed to grant them an order of vacant possession over the suit property as a result of which they are now unable to execute the judgment. She further averred that without an order of vacant possession, an eviction order cannot be issued.

The Second Application is not opposed by the Defendant/Respondent. The intended interested party filed their Grounds of Objection dated 24th June 2014 which I will not consider for the reason that I have earlier ruled that they cannot be enjoined into this suit.

In this suit, I entered judgment in favour of the Plaintiffs and delivered the same on 20th December 2013. Specifically, it was my finding that the Plaintiffs had established that they are the owners of the suit property. I therefore find no difficulty in finding that the Plaintiffs are entitled to an order of vacant possession over the suit property and an eviction order is hereby issued to them. In a nut shell, I hereby allow the Second Application. Each party shall bear their own costs.

DELIVERED AND DATED IN NAIROBI THIS 6TH DAY OF FEBRUARY 2015.

MARY M. GITUMBI

JUDGE