



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

E.L.C. NO 184 OF 2014

FORMERLY E.L.C. NO. 806 OF 2014

MIRIAM NJOKI NJERU.....PLAINTIFF/RESPONDENT

VERSUS

JOHNSTONE NJERU MURINGIH.....DEFENDANT/APPLICANT

RULING

Introduction

This ruling is in respect of the preliminary objection by the defendant/applicant through his counsel in which he seeks this suit to be struck out for disclosing no reasonable cause of action and is therefore an abuse of the court process. They also seek an order to compel the Land Registrar Embu to lift a restraining and/or prohibition order against the suit land reference number Kyeni/Kigumo/3793.

Finally, they seek an order that the plaintiff/respondent be ordered to pay the costs of the suit. The defendant/applicant has annexed a supporting affidavit to his application.

The plaintiff/respondent was served with a hearing notice of this application. She did not attend the hearing. An affidavit of service duly filed on 16th February, 2015 clearly indicates that she was served with the hearing notice. As a result, the hearing proceeded in her absence.

The Case for the Defendant/Applicant:

The defendant/applicant in his notice of motion has stated that the suit land was lawfully obtained by him through succession cause number 24 of 1994 by virtue of confirmation of a grant, which ordered the suit land to be his property. According to him, the suit property is not ancestral land but a direct gift given to him by his late grandfather. Finally, he says that the plaintiff/respondent who is his mother has no legal right to lay claim over the suit land.

Counsel for the defendant/applicant has also submitted that when his client was awarded the suit land by the High Court at Embu in Succession Cause number 24 of 1994, the plaintiff/respondent was alive and did not challenge the succession order. He further submitted that the suit land did not belong to the plaintiff's husband. This suit he says should be dismissed for being an abuse of the court process.

The Case for the Plaintiff/Respondent

The plaintiff/respondent did not take part in this application. However, a perusal of the plaint indicates that the respondent has stated that the suit land belongs to the family and that is where her late husband

and the defendant were living. She states in paragraph 6 of the plaint that her son was born and brought up in this suit land.

According to her, the applicant fraudulently obtained the suit land through the succession process. The plaintiff says in her plaint that she came to learn much later that the land had been transferred into the name of her applicant's son. She has therefore prayed for a declaration that her applicant's son illegally obtained the title to the suit land. She has further prayed that the District Land Registrar Embu be ordered to cancel the name of the applicant as the owner and restore his ownership of the land to the plaintiff as a trustee for all of her children and herself.

The Applicable Law:

It is clear from the affidavit evidence upon which the notice of motion is based and the pleadings of both parties that this is a succession matter. It is not a land dispute. The preliminary objection is based on the fact that the applicant was awarded the suit land by the High Court in succession cause number 24 of 1994, which order has not been challenged and has not been revoked to date.

In the circumstances, this matter is hereby transferred to the High Court to be dealt with in accordance with the law. It is in that court wherein these challenges and related matters may be canvassed.

This case reminds one of the practice which prevailed in the pre 1873 England before the merger between the common law and the chancery courts (courts of equity). During that period, a litigant was forced to move from one court to another in search of his remedies. I hope we are not moving in the same direction.

Verdict and Disposal Order

In order to preserve the status quo in this suit, the order 40 injunctive interim orders are hereby extended until further orders by the High Court in the same succession cause number 24 of 1994.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **11th** day of **March, 2015**.

In the presence of the Applicant and in the absence of the Respondent.

Court clerk Muriithi

J.M. BWONWONGA

JUDGE