



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC NUMBER 60 OF 2015

JOHN MBUGUA BORO.....1ST PLAINTIFF

NICHOLAS NJUE MATI.....2ND PLAINTIFF

JOSEPHAT MICHIRA MOGAKA.....3RD PLAINTIFF

GEORGE WAMBIRI NDAMAIYU.....4TH PLAINTIFF

(Suing for and on behalf of Emmaus Welfare Society)

- VERSUS -

ANNE WAIRIMU NDUNG’U

(As the Chairman of **URUTAGWO MWIRUTI WOMEN GROUP.....DEFENDANT/APPLICANT**

ANDREW GITONGA.....INTERESTED PARTY / RESPONDENT

RULING

1. This is a Ruling in respect of a Notice of Motion dated 28th April 2020 which sought the following orders: -

1. The Honourable Court be pleased to enjoin one Andrew Gitonga as an interested party to this suit in the first instance.

2. Spent

3. There be an order restraining the said Andrew Gitonga from alienating, constructing, entering and /or interfering with the suit plot No.123 or any of the suit plots on LR No.6845/67 pending the final determination of this suit.

4. Costs of this application be in the cause.

2. When the application was placed before me on 5th May 2020, I granted a temporary injunction against the proposed interested party for purposes of preserving the suit property even though he had not been enjoined in this suit. In the application, the Applicant contends that she had no dealings with the Respondent in that she never sold him the suit property.

3. The Applicant further contended that the Respondent is in the process of constructing on the disputed property and that her pleas to the Respondent to stop construction have been in vain. She now prays that the suit property be preserved until the suit is heard and determined.

4. The Respondent opposed the Applicant’s application based on a replying affidavit sworn on 13th May 2020 in which he has explained in detail the transaction between him and the Applicant. He annexed evidence of purchase of the disputed property in addition to two others. He even annexed documents to show that the Applicant has received payments from the Plaintiff’s members for processing titles. He contends that the Applicant obtained orders stopping him from renovating a house he has been residing in since 2005. The house is on plot No.123 which is the disputed plot.

5. The Applicant filed a further affidavit in which she denied the Respondent’s claims in the replying affidavit. The Respondent filed a further affidavit without leave of the court. I proceed to expunge it from the record.

6. I have carefully considered the Applicant's application as well as the opposition thereto by the Respondent. I have also considered the submissions by the parties herein. There are only two issues for determination. The first is whether the Respondent should be enjoined in these proceedings as an interested party. The second is whether the preservative orders which were granted ought to be confirmed.

7. On the first issue, there is no contention that the Respondent is a member of the Emmaus Welfare Society who is the Plaintiff. This is confirmed by the documents filed together with the Plaintiff. The Applicant has also conceded that the Respondent is a member of the Plaintiff society. This being the case, there is no need for enjoining the Respondent as an interested party. His interests are well catered for by the Plaintiff.

8. On the second issue, it has emerged that the Applicant obtained the preservative orders through non-disclosure of material facts. The Applicant failed to disclose that the Respondent and herself are joint account holders and that she had received money towards processing titles for the owners of various plots which she sold to about 140 members who include the Respondent. I find that this application was maliciously filed. I find that the same lacks merit. The same is dismissed with costs to the Respondent. The injunction orders which had been given are discharged.

It's so ordered.

Dated, Signed and Delivered at Nairobi on this 30th day of September 2020.

E.O.OBAGA

JUDGE

In the Virtual Presence of : -

M/s Wanjiku for Plaintiffs/Respondent

Mr Nduati for Defendant/Applicant

Mr Gioche for Interested Party

Court Assistant: Hilda

E.O.OBAGA

JUDGE