



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 228 OF 2013

KINYUA GACHOKIPLAINTIFF

VERSUS

EUSEBIA NJOKI NGARI DEFENDANT

SAMUEL KINYUA NJERU 3RD PARTY

RULING

The plaintiff in this suit (KINYUA GACHOKI) filed a plaint against the defendant (EUSEBIA NJOKI NGARI) seeking the cancellation of title No. MBETI/GACHOKA/3038 issued to the defendant. The defendant filed a defence and a Notice of Motion to strike out the suit as not disclosing a cause of action. That application was up-held by Ong'udi J. in a ruling dated 26th September 2012 in which the Judge struck out the plaintiff's claim with costs.

SAMUEL KINYUA NJERU (the 3rd party herein) has now filed a Chamber Summon application seeking to be enjoined in the case so as to protect his interest. The said interest, as per his supporting affidavit, is a portion of 0.4 Ha out of land parcel No. MBETI/GACHOKA/3034 which he says the defendant sold him. That application has been opposed and Mr. Mungai counsel for the defendant filed grounds of opposition on the ground that the said application is an abuse of the Court process.

When the application came up for hearing on 1st July 2014, the proposed 3rd party repeated the averments that he needs to protect his interest since the defendant sold him a portion of the land yet the plaintiff has placed a caution on it.

Mr. Mungai argued in reply that the application has been brought in the wrong format and in any case, the suit was dismissed on 26th September 2012 and so there is no suit to be enjoined in and this application is meant to frustrate the taxation of costs pending before the Deputy Registrar.

I have considered the application by the intended 3rd party and the opposition to the same. It is true that the said application is not founded under any provision of the law. However, in the spirit of **Article 159 of the Constitution**, I do not consider that omission alone to be sufficient cause to strike out or dismiss the said application since the remedy sought is clear and failure to cite the legal provision has not caused the respondent any prejudice. That ground of opposition fails.

The other ground is that there is no suit in which the proposed 3rd party can be enjoined since the suit was struck out by Ong'udi J. on 26th September 2012. That ground of opposition is justified. The suit by the plaintiff having been struck out, there is no suit in existence to which the proposed 3rd party can be

enjoined. His application dated 7th May 2014 is therefore clearly misconceived and must be dismissed with costs which I hereby do.

Having said so, the proposed 3rd party is not entirely without a remedy if indeed he has any interests to protect in the suit property. He can move the Land Registrar under the relevant provisions of the Land Registration Act to protect his interest.

It is so ordered.

B.N. OLAO

JUDGE

4TH JULY 2014

4/7/2014

Before

B.N. Olao – Judge

Mwangi – CC

Plaintiff – present

Mr. Magee for Mungai for Defendant - present 3rd party - present

COURT: Ruling delivered in open Court this 4th day of July, 2014.

Mr. Magee for Mr. Mungai for defendant – present

Plaintiff present in person

3rd party present in person

B.N. OLAO

JUDGE

4TH JULY, 2014