



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 20 OF 2018

JOSEPH WACHIRA NJOKA.....PLAINTIFF

VERSUS

FRANCIS KANYORI GAKUNJU.....1ST DEFENDANT

JANE WAMBUI GAKUNJU.....2ND DEFENDANT

RULING

Introduction

The Applicant, Jane Wambui Gakunju has moved this Court vide a Notice of Motion dated 19th September 2019 seeking the following orders:-

(1) That the inhibition order, caution and/or restriction against the title of land parcel No. KIRINYAGA/GACHIGIRIRI/3228 be lifted.

(2) That costs of this application be in the cause.

The application is premised on the following grounds:-

- (a) That this case was filed by a stranger who lied to the Court that he was a beneficiary to my land.
- (b) That the plaintiff had sought for orders of inhibition to issue inhibiting the registration of any dealings on the register of land parcel No. KIRINYAGA/GATHIGIRIRI/3228 pending the hearing and determination of the case and which orders was registered against the title of the land.
- (c) That on 30th October 2018, the Court dismissed the plaintiff's suit with no order as to costs.
- (d) That it is necessary to have the title of the land clean so that the registered owners can deal with the property.
- (e) That no prejudice will be occasioned to the respondent should the orders sought issue.

Applicant's Statements of Facts

The application is not supported by affidavit evidence.

When the application came up for inter-partes hearing, there was no attendance on the part of the respondent and/or his advocate. Upon confirming that the hearing date had been taken by consent of the parties, the Court allowed the application to be heard Ex-parte.

Legal Analysis

I have considered the application and the grounds apparent on the face thereof. It is not in dispute that this suit was dismissed for want of prosecution on 30th October 2018 and the plaintiff has not appealed against the dismissal order. It is not also in dispute that there is no interlocutory application(s) pending in respect of the suit property. The 2nd defendant/applicant filed this Notice of Motion seeking the removal of the caution which he had placed on the suit land and when the application came up for hearing, neither the respondent nor his advocate attended Court. The plaintiff/respondent had instituted this suit simultaneously with an application under certificate of urgency

seeking to issue an order of inhibition, inhibiting the registration of any dealings on the register of suit property land parcel No. KIRINYAGA/GATHIGIRIRI/3228 pending the hearing and determination of that application. The application was placed before the duty Judge who granted the orders and directed that the orders were to last for 14 days failing which the orders shall abate and be of no effect. The impugned orders have remained in existence beyond the stipulated period and even long after this suit was dismissed for want of prosecution on 30th October 2018. No wonder the respondent did not file any response or even attend Court during the hearing of this application.

For all the reasons I have given, I find the application dated 19th September 2019 merited and the same is hereby allowed as prayed. It is so ordered.

READ, DELIVERED and SIGNED in open Court at Kerugoya this 9th day of October, 2020.

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E.C. CHERONO

ELC JUDGE

In the presence of:-

- 1. Applicant in person – present***
- 2. Plaintiff/Advocate – absent***
- 3. Mbogo – Court clerk.***