



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NO. 324 OF 2004

MBURU KINANI.....PLAINTIFF/RESPONDENT

VERSUS

KANYEKI FARMERS CO-OP SOCIETY LTD.....DEFENDANT

RULING

By A Notice of Motion dated 22nd June, 2011 the Plaintiff/Applicant has brought this application under the provisions of Section 3A of the Civil Procedure Act, orderLI rule 1, order 24 Rules 3(1) & (2)of the Civil Procedure Rules 2010, Sections 62(1)(c)and(2),63 and64 of the Co-operative Societies Act (Amended) and all enabling provisions of the Laws, seeking that the Certificate of title of L.R. NO. 3777/80 deposited in court be released to the plaintiff and costs.

The Application is premised on the grounds on the face of the application and is supported by the affidavit of Mburu Kinani sworn on 22nd June, 2011. He deposes that the defendant having been deregistered by the Commissioner for Co-operative Development and Marketing on 26th November, 2007 vide gazette notice NO. 12469 of 21st December, 2007 ceased to exist and therefore could no longer defend this suit: that the appeal by the defendant to the Minister of Co-operative Development and Marketing was also disallowed: that the defendant cannot posthumously claim the title to the suit which is in the name of the plaintiff who is the absolute and indefeasible owner of the suit land and therefore entitled to possession of the title: That the defendant is being used as a mask to frustrate the plaintiff in this case,hold the plaintiff at ransom for no good reason in law which is a waste of judicial time: that the advocate should disclose who has been instructing him since 2007 after the cooperative was degazetted: that in the interest of justice the advocate should be condemned to pay the plaintiff's costs and the title released to the plaintiff as there is nobody claiming it.

The application is opposed.

The respondent filed grounds of opposition on 23rd April, 2013 that the applicant had filed a similar application dated 19th May, 2009 which was heard and dismissed by this honorable court on 22nd July, 2009 and hence the issue is resjudicata. That there is an appeal pending for hearing filed by the respondent against the ruling by the Minister for Cooperatives being High Court Nairobi Civil Appeal NO. 380 of 2011 and that this application is bad in law, made in bad faith, is incompetent, premature, misconceived and not in the interest of justice.

At the hearing of the application I heard submissions by Prof. Ojienda Counsel for the applicant. Counsel for the respondent did not favor the court with his presence.

I have read the pleadings filed by both parties herein in support of their respective opposing positions. I

have also carefully considered the submissions made by counsel for the applicant.

A similar application dated 19th May, 2009 had been filed by the plaintiff while an appeal was pending before the Minister for Cooperatives and Marketing following degazetment of the defendant by the Commissioner of Cooperatives. Kimaru J in his ruling dated 22nd July, 2009 made the following observations before dismissing the application :

- i. The defendant's registration was cancelled by the Commissioner for Co-operatives Development on 21st December, 2007 vide gazette notice NO. 12469 pursuant to powers given to him under Section 62(1) of the Co-operatives Societies Act.
- ii. Upon being made aware of its deregistration, the defendant filed an appeal to the Minister against the decision of the Commissioner. The learned judge held the view that the court at that point lacked Jurisdiction and could not voice an opinion on the appeal pending before the Minister, its validity or lack thereof as there was no competent appeal before the High Court for him to make such a determination.
- iii. He ordered that status quo be maintained until the appeal pending before the Minister was concluded.

Now back to the application dated 22nd June, 2011. An appeal No.380 of 2011 against the ruling by the Minister for Cooperatives has been preferred to the High court in Nairobi. It is pending for hearing and determination. I share the views expressed by the learned judge in the earlier application. Justice demands that the prevailing status quo be maintained and the plaintiff is urged to be patient and await the decision of the High Court in regard to the appeal lodged by the defendant until it is established as a legal fact that the cancellation of the defendant as a co-operate Society stands and cannot be overturned.

In the premises therefore, I hold that the application by the plaintiff cannot at this stage be allowed. Meanwhile, I will stay proceedings in this case pending the hearing and determination of the appeal lodged by the respondents to the High Court.

Each party to bear their costs for the application.

Dated, signed and delivered in open court at Nakuru this day of 8th November 2013.

L N WAITHAKA

JUDGE

PRESENT

Mr Mbeche holding brief for Mr Kamere for Respondent

N/A for Applicant

Emmanuel Maelo: Court clerk

L N WAITHAKA

JUDGE