



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL 51 OF 2012

GRACE WAMBUI NGATHO.....APPELLANT

VERSUS

AGNES TOWET.....1ST RESPONDENT

ISAAC GATHOGO.....2ND RESPONDENT

RULING

The Notice of Motion dated 20/3/2012 is brought by Grace Wambui Ngatho, the appellant herein. She prays that pending the hearing of this appeal, the court do temporarily restrain the respondent by himself, his agents or servants from entering, trespassing or in any way interfering with the appellant's peaceful possession of Plot Uns Commercial Plot No. 14 Gilgil Township.

The application is based on grounds found in the body of the application and the appellant's affidavit dated 20/3/2012. The appellant is the legal administrator of the estate of Stanley Ngatho Maara having been so appointed in HC Succession Cause No. 98/2003 (GWN1); that the deceased was allotted the disputed plot which he started to develop by building a three roomed building, water tank, barbed wire and latrine thereon. On 25/5/2011, the appellant was informed that the building was being demolished and bricks were being ferried away. She found the 2nd respondent who informed her that he was paid to do the work by the 1st respondent. The 2nd respondent was arrested but released. On 31/5/2011, the appellant filed Nakuru CMCC 452/2011 (GMN4) and contemporaneously filed an application seeking orders of injunction. The application was opposed by the 1st respondent who swore an affidavit (GWN6). The 1st respondent raised a preliminary objection to the effect that the Chief Magistrate's court did not have jurisdiction to hear the matter and the objection was upheld. Both the suit and application were dismissed and the appellant preferred this appeal. Before the dismissal order, there had been orders of injunction and the appellant fears that the suit property may be developed and put beyond her reach if the order sought is not granted.

Alice Chelangat Towet, swore a replying affidavit claiming to have been wrongly sued as Agnes Towett. She opposed the application on the basis that it lacks merit, that there is no arguable appeal; that she is the legally registered owner of the plot LR 1317/451 which was allotted to her in 1993 and registered in her names on 24/6/1996. She exhibited both the allotment letter and certificate of title; that the applicants plot is Uns Commercial Plot No. 14 Gilgil whereas her plot was originally **Uns commercial No.1 Gilgil Township** before registration. The respondent further deposes that she has always paid land rent for the plot. The respondent has also exhibited correspondence from the Commissioner of Lands and District Land Surveyors report confirming that she is the registered owner of the plot.

I have considered the grounds set out on the face of the application, the affidavits and submissions by counsel.

According to the applicant, her husband was allotted plot number **Uns Commercial Plot No. 14 Gilgil Township**. To the contrary the 1st respondent claims that her plot is **Uns Commercial Plot No. 1 Gilgil Township** which was subsequently registered as LR No. 1317/451. The two allotment letters issued to the two parties bear different numbers. It is also noteworthy that the plot allotted to the appellant's husband measured 0.12 Ha while that allotted to the 1st respondent was 0.53 Ha. The question is whether the plot that was allotted to the appellant is the same as that allotted to the 1st respondent. The allotment letters seem to refer to different parcels of land. If the respondent was demolishing the boundary on Plot 1 then the nexus between the plots needs to be ascertained. Is one of the parties claiming the wrong plot or were the two parties issued with two different numbers for the same plot? In my view, the applicant has demonstrated that he has an arguable case and will suffer substantially if the respondent goes ahead with construction or continues dealing with the disputed plot in a manner adverse to the applicant's interest.

The ruling of the lower court was rendered on 24/2/2012 and the applicant filed this Notice of Motion on 20/3/2012, about a month later. I find that it was filed without any unnecessary delay.

The applicant did not make any offer for security for costs. The court will grant prayer (c) of the Notice of Motion dated 20/3/2012 on condition that the applicant deposits Kshs.50,000/- with the court being security for costs, within 10 days hereof. In default, the order of injunction will lapse automatically.

Costs to be in the cause.

DATED and DELIVERED this 6th day of July, 2012.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Ngure for the appellant

Mr. Nyaribo for the respondents

Kennedy – Court Clerk