



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI

CIVIL DIVISION

CIVIL CASE 527 OF 2005

NGANGA MUCHERU
.....1ST PLAINTIFF

NJENGA MWOKOKE
..... 2ND PLAINTIFF

**NJUGUNA GITU FOR AND ON BEHALF OF THE ESTATE
OF NJERI GITU (DECEASED) 3RD
PLAINTIFF**

**PRISCILLA WANJIKU KAMAU (FOR AND ON BEHALF
OF THE ESTATE OF KAMU KURIA (DECEASED)
.... 4TH PLAINTIFF**

KURIA GITU
..... 5TH PLAINTIFF

VERSUS

MICHAEL GICHUHI MUIRU DEFENDANT

RULING

The Applicants by the Chamber Summons of the 4.5.2005 apply for an order that the Defendant/Respondent: -

(1) THAT the Defendant/Respondent herein whether by himself, his agents employees or whomsoever be restrained by an Order for temporary injunction from entering into Plot No.19 Gikuni Market and demolishing the building erected thereon, trespassing, alienating, disposing or interfering in anyway with the said plot NO.19 Gikuni Market and the building erected thereon until the hearing and determination of this suit.”

The applicants allege that they are the owners of the suit premises and that the Defendant has fraudulently and without the knowledge of the Applicants caused the suit premises to be transferred into his name through succession. In support of their contentious the Applicants have exhibited to the supporting affidavit of the first Applicant a document dated 25.10.72 and issued by the County Council of Kiambu in which Wagichachi Mwihuri, Kuria Gitu, Kamau Kuria, Njeri Gitu and Njenge Mwokoke were allocated plot No.19Gikuni Market (the suit premises). The first and third and fourth named allottees above are deceased and the third and fourth are represented by their personal representatives the third Applicant and

fourth Applicant.

Wagichechi Mwihuri died on the 2.8.1981 leaving a son Ndungu Wagichechi who is also deceased. Before his death, Letter of Administration were granted to him and Lucy Wanjiku Mwihuru and Wambui Mwokoke and annexed to the supporting affidavit to this application is a copy of the Confirmation of Grant which does not include the suit premises as part of the property. The Supporting Affidavit alleges that the property was the subject matter of Court proceedings in HCCC of 550 of 1992 brought by Ndungu Wagichechi, the representative of the late Wagichechi Mwihuri in which Shields J. made an order that Accounts of the business of the Defendants in that case be taken. The Defendants being the Plaintiff in this suit or their predecessors. The ruling was subsequently set aside. The contents of paragraph 11 of the Supporting Affidavit do not appear to bear out the contents of the order of Mr. Justice Shields. Be that as it may page 13 of the Supporting Affidavit states: -

“THAT despite the fact that the Decree of 20th May, 1993 was set aside on 20th January, 1994, NDUNGU WAGICHACHI willingly and knowingly proceeded to Kikuyu Town Council and using the already set aside Decree he fraudulently applied for the Plot No.19 Gikuni Market to be transferred into his name and that of his co- Administrator LUCY WANJIKU MWIHURI and the Town Council of Kikuyu approved the transfer on 25th October, 1994 Annexed hereto and marked NM8 is a copy of the Town Council of Kikuyu Minute No. WTPM/75/94 of its “Works, Town Planning and Markets Committee’ meeting held on 25th October, 1994 to that effect.”

The outcome is that the Applicant alleged that the transfer of the suit premises into the name of Ndungu Wagichechi was fraudulent and the he had no right to transfer the suit premises into the name of the Defendants.

The Defendant in his Replying Affidavit alleges he purchased the suit premises from the original owner and got a clear title. The Defendant does not, however, annex a copy of his alleged title to the suit premises. He does not, however, deny the allegation of the Applicants that they put permanent building in the suit premises comprising two butcheries, which are rented out to third parties.

From the evidence it appear that the Applicants have an interest in the suit premises. What the exact nature of their interest is and whether the Defendant got a good title to the suit.

Which can only be decided at a full hearing of the suit. In the meanwhile the Applicants being in possession of the suit premises have shown a prima facie case with a probability of success. In any event the balance of convenience falls in this favour. In the result I grant the order sought in the Chamber Summons of the 4.5.2005 with costs to the Applicant.

Dated and delivered at Nairobi this 4th day of July 2005

P.J. RANSLEY

JUDGE