



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC SUIT NO.916 OF 2016

KAMAU GACHOKA.....PLAINTIFF

=VERSUS=

MARY THAMI KAMUA & 3 OTHERS.....DEFENDANTS

RULING

1. The Defendants/Applicants filed a Notice of Motion dated 24th December 2018, in which they seek the following orders:-

1) Spent

2) Spent

3) That pending the hearing and determination of this suit, the Honourable Court be pleased to grant an order of injunction restraining the respondent from interfering with the applicants' possession and use of land parcels Ndumberi/ Ndumberi/ 3942, 3943, and 3944.

4) Spent

5) That pending the hearing and determination of this suit, the Honourable Court be pleased to issue an order retaining the cautions placed by the applicants on 20th September 2018 in regard to land parcels Ndumberi/ Ndumberi/ 3942, 3943, and 3944.

6) That costs of this application be provided for.

2. The 1st Applicant is a wife to the Respondent who is now the registered owner of LR Nos. Ndumberi/Ndumberi/3942,3843 and 3944. The 3rd and 4th Applicants are sons of the respondent whereas the 2nd Applicant is a nephew of the Respondent.

3. The Respondent filed this suit on 29th July 2016. The Respondent contemporaneously filed an application in which he sought among other orders a mandatory injunction compelling the Applicants to vacate the properties they were occupying. The application was dismissed on 20th June 2017. The main suit is slated for hearing on 4th March 2019.

4. The Applicants have now moved to court seeking orders of temporary injunction seeking to restrain the Respondent from interfering with the suit properties. The Applicants are also seeking orders that the cautions which they registered against the titles be retained. The Applicants argue that the Respondent has irregularly sub-divided the original property into three portions and that he intends to sell the same; that the Land Registrar Kiambu has threatened to remove the cautions and that they are being intimidated by the local administration who are who are apparently in support of the Respondent's moves.

5. The Respondent who was served with the application did not file any replying affidavit. The Respondent is said to have gone to the chief magistrates court in Kiambu where he has filed another suit claiming among other prayers an eviction of the Applicants from one of the parcels of land he owns.

6. I have considered the Applicants' application. The only issue for determination is whether an injunction can be granted in the manner the Applicants are praying and whether the court can order retention of the cautions which the Applicants had lodged. This is a family dispute. The Respondent alleges to be a polygamous man who wants to subdivide his land and share it out. The application which the court dismissed was mainly dismissed on the ground that the Respondent did not come out clearly on which portion he intended to give to the Applicants

herein. The Respondent is a man who is the registered owner of the properties. The court cannot dictate him on how to share it out. The court can only protect the applicants from unlawful eviction. The Applicants herein have not filed any counter-claim upon which they can seek injunctive reliefs. The court cannot order that cautions they registered against the titles be retained. It is the Applicants who registered those cautions and the process of their retention or removal is clear. The court cannot be drawn into ordering retention of cautions which it never ordered in the first place. I therefore find that Applicants' applicant has no merits. I dismiss the same with no orders as to costs.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 7th day of March 2019.

E.O.OBAGA

JUDGE

In the presence of;-

Mr Muriuki for Defendants

Mr Thairu for Mr Mburu for Defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE