



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MILIMANI

ELC NO. 1486 OF 2014

SIMON GATHECHA MWANGI.....PLAINTIFF

=VERSUS=

EMBAKASI RANCHING COMPANY LIMITED....1ST DEFENDANT

MRS. MWAURA GUMBA.....2ND DEFENDANT

RULING

1. This is a Ruling in respect of a Notice of Motion dated 23rd July, 2018. The application is brought by the 2nd Defendant/Applicant who seeks orders restraining the Plaintiff/Respondent and the 1st Defendant/Respondent from transferring and registering Parcel Nos C 1309/136/10254 and C 1310/136/10253 (suit properties) pending hearing and determination of this suit.
2. The dispute herein relates to the suit properties which are being claimed by the Plaintiff/Respondent and the 2nd Defendant/Applicant based on different property numbers. The Plaintiff/Respondent contends that the suit properties were purchased by him from one Ernest Gakure Kigumi. According to the Plaintiff/Respondent, the properties were known as Plot Nos V 4564 AND V 4565. The 2nd Defendant/Applicant on the other hand claims that the suit properties belong to his late husband Mwaura Gumba who bought them from the 1st Defendant/Respondent. According to the 2nd Defendant/Applicant, the suit properties were known as D 54 and D 55.
3. The disputants herein agrees that the suit properties are what are known C 1310/136/10254 and C 1310/136/10253 which are in the process of being registered with the lands office. The Applicant contends that the suit properties were purchased by her late husband from the 1st Defendant in the 70's. Her husband was given share certificates upon payment of the requisite fees. He took possession and fenced the suit properties. In 2014, the Applicant went to check on the suit properties and found that the Plaintiff/Respondent had put up a new fence round the suit properties and had even interred the remains of his wife on the same.
4. The present application was brought because the Applicant discovered that the 1st Defendant is in the process of having the suit properties registered in the name of the Plaintiff/Respondent. This is why she wants the process of registration stopped until the suit herein is heard and determined.
5. The Applicant's application has been opposed by the Plaintiff/Respondent through a Replying Affidavit sworn on 27th August, 2018. The Plaintiff/Respondent contends that the Applicant has not made out a case for grant of an injunction, that he bought the suit properties from Ernest Gakure Kigumi in 2006 and 2010 and that when the Government directed that plot owners at Embakasi Ranching be registered and issued with title documents, he presented his documents which were verified by an appointed committee which found the same to be genuine and recommended him for registration. The Plaintiff/Respondent further contends that he has buried his wife on the suit properties and that he should be let to be registered as the owner of the suit properties. The Plaintiff/Respondent further argues that the Applicant has not adduced any evidence to show that she is the owner of the suit properties.
6. I have considered the Applicant's application as well as the opposition to the same by the Plaintiff/Respondent. I have also considered the submissions by the parties herein. The Applicant is only seeking to have the process of registration stopped until this dispute is determined. There is no doubt that it is the Plaintiff/Respondent who is in possession. The Plaintiff/Respondent has even interred the remains of his wife on the suit properties. On 16th February, 2016, the application by the Plaintiff for injunction was granted. The Defendants were barred from exhuming the remains of the Plaintiff's wife. The Defendants were also barred from interfering with the occupation of the Plaintiff. This application was allowed on the understating that the parties were to have the dispute determined through hearing.
7. There is evidence that the process of registration is going on. The suit properties have been given parcel numbers. It is fair that the registration process be stopped until this dispute is heard and determined. The documents produced herein show that the Plaintiff purchased the suit properties from a non-member of Embakasi Ranching. The Applicant's documents show that her husband was an original member. It is important to determine how the non-member who sold the properties to the Plaintiff/Respondent obtained them. I find that the Applicant has made out a case for grant of injunction. I allow the Applicant's application in terms of prayers (2) and (4) of the Notice of Motion dated

23rd July, 2018.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 25th day of April, 2019.

E.O.OBAGA

JUDGE

In the presence of M/s Wangui for Plaintiff/Respondent and M/s Wambui for Mr. Odero for 2nd Defendant/Applicant.

Court Assistant – Hilda

E.O.OBAGA

JUDGE

25.4.2019