



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
THIKA LAW COURTS
ELC CASE NO.609 OF 2017

NAOMI KAGURE MARAGUA.....PLAINTIFF/APPLICANT

-VERSUS-

GEORGE KINUTHIA THIONG'O.....1ST DEFENDANT/RESPONDENT

REGISTRAR FOR LANDS, THIKA.....2ND DEFENDANT/RESPONDENT

COMMISSIONER FOR LANDS.....3RD DEFENDANT/RESPONDENT

ATTORNEY GENERAL.....4TH DEFENDANT/RESPONDENT

RULING

The Plaintiff/Applicant filed a *Plaint* dated 20th June 2017, and sought for various orders. Among the orders sought are:-

a) A permanent injunction order against the 1st Defendant to restrain him from trespassing the suit land Ruiru/Ruiru East Block 2/1400, and the orders be enforced by the DCIO and OCS Juja.

b) The Registrar for Lands, Thika to avail by reconstructing the Green Card for parcel No.Ruiru/Ruiru East Block 2/1400 on Registry map sheet 2 in the name of the Plaintiff.

The Applicant alleged that she is the registered owner of land parcel *No.Ruiru/Ruiru East Block 2/1400*, which she bought from *Nyakinyua Investment Ltd*, a land buying Company. The Plaintiff attached a copy of the title deed which showed that she was registered as the proprietor of *Ruiru/Ruiru East Block 2/1400* on 26th August 1988.

Subsequently, the Plaintiff also filed a *Notice of Motion* application dated 3rd July 2017, and sought for the following orders:-

1. That there be a temporary injunction restraining the 1st Respondent from illegally entering land parcel No.Ruiru/Ruiru East Block 2/1400 and from harassing Plaintiff through the Juja DCIO office pending hearing and determination of the application herein and suit herein.

2. That the costs of this application be provided for.

It was also supported by the affidavit of **Naomi Kagure Maragua**, who averred that as a registered owner of the suit property, she has been in occupation of the same doing farming by herself and through other people who took a lease from her way back in **1988**. It was her contention that the 1st Defendant has obtained a false title over the suit property which title shows that the plot is on map sheet 3 whereas the Plaintiff's plot is on map sheet 2.

Further that she was summoned to **Juja Police Station**, to clear the air over the 1st Defendant's claim over the suit plot and she did so by production of her documents. That despite the explanation of her ownership, the 1st Defendant has continued to harass her using the police in a bid to have a quick fix. She alleged that she was recently summoned by the **DCIO Juja Police Station**, who has been asking her to surrender the original title deed for verification. She also alleged that the 1st Defendant has been entering into her parcels of land which situation can degenerate to breakdown of peace unless he is restrained by this Court.

She urged the Court to restrain the 1st Defendant from his actions of unwarranted harassment through **Juja DCIO** and other agencies.

The application is contested by the 1st Respondent/Defendant **George Kinuthia Thiongo** who filed a **Replying Affidavit** on **26th July 2017** and averred that he is the rightful and legal owner of all that parcel of land known as **Ruiru/Ruiru East Block 2/1400**, and that he is in possession of a valid and indefeasible title thereof which he purchased in the year **2010** from **Peris Wairimu Kabiru**. He confirmed that he signed the **Sale Agreement** dated **12th June 2010** marked **GKT-5**. He stated that he paid all the purchase price of **Kshs.375,000/=**. That after obtaining all the relevant consents, the suit land was finally registered in his name on **2nd November 2010**, and he annexed the title deed as **GKT-1**. He also attached a copy of the official search as **GKT-2** which showed that the suit land is registered under his name.

The application was canvassed by way of **written submissions** which this Court has carefully considered.

There is no doubt that suit property herein is registered both in the names of the Plaintiff and 1st Defendant. The 1st Defendant has a title deed issued on **2nd November 2010**. The Plaintiff/Applicant too has a title deed in her name in respect of the suit property **Ruiru/Ruiru East Block 2/1400**, which was issued to her on **26th August 1988**. The Plaintiff alleged that she purchased the suit property from **Nyakinyua Investment Ltd** which is a land buying Company. The 1st Defendant averred that he purchased the suit property from **Peris Wairimu Kabiru** as is evident from **annexture GKT-4 a title deed** which was issued on **26th October 1999**. The said title deed was issued about **eleven years** (11 yrs) after the Plaintiff's/Applicant's title was issued to her.

Though the 1st Defendant alleged that he was given a clearance letter from **Nyakinyua Investment Ltd** dated **20th July 1999**, to confirm that the suit land was issued to **Peris Wairimu Kabiru**, the letter in issue marked **GKT-3** states that the land **Ruiru/Ruiru East Block 2/1400** belongs to **Jane Wambui Njoroge**. There is therefore a conflict herein on whether the land belonged to **Peris Wairimu Kabiru** or **Jane Wambui Njoroge** before the same was purchased by 1st Defendant. The Plaintiff also alleged that she purchased the suit land from **Nyakinyua Investment Ltd**. There are conflicting issues on who really owned the suit property before it was transferred to the 1st Defendant. That conflict or doubt can only be resolved by calling of evidence especially from **Nyakinyua Investment Ltd**. The calling of evidence can only be done in the full trial.

However, at the moment, there are two competing titles. At this juncture, the Court cannot determine which of the two titles is genuine.

That determination can only be done after calling of evidence.

However, before the evidence is called, the suit property needs to be preserved by maintaining of *status*

quo. The *status quo* herein means that none of the parties herein should interfere or deal with the suit property in whatsoever manner until the suit is heard and determined. See the case of Virginia Edith Wambui...Vs...Joash Ochieng Ougo, Civil Appeal No.3 of 1987 (1987) eKLR, where the Court of Appeal held that:-

“The general principle which has been applied by this court is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided on a trial”.

The Court finds that the best remedy herein is to preserve the suit property by directing that none of the parties herein should interfere or deal with the suit property until the suit is heard and determined.

The Plaintiff/Applicant has alleged that the 1st Defendant is harassing her through the **Juja DCIO** office. The 1st Defendant has not disputed that allegation. The Court further restrains the 1st Respondent from harassing the Plaintiff/Applicant through **Juja DCIO** pending the hearing and determination of this suit.

It is so ordered.

Dated, Signed and Delivered at Thika this 13th day of April 2018.

L. GACHERU

JUDGE

In the presence of

Mr. Munene holding brief for Mr. Kimani for Plaintiff/Applicant

No appearance for 1st Defendant/Respondent

No appearance for 2nd Defendant/Respondent

No appearance for 3rd Defendant/Respondent

No appearance for 4th Defendant/Respondent

Lucy - Court clerk.

L. GACHERU

JUDGE

Court – Ruling read in open court.

L. GACHERU

JUDGE

13/4/2028