

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 114 OF 2016

GEOFFREY MUTHIGANI GICHURU.....PLAINTIFF

-VERSUS-

MARION MUTUNDU GICHURU.....DEFENDANT

RULING

1. On **7th February 2017**, the plaintiff/applicant filed a motion brought under **Section 3** and **3(a)** of the Civil Procedure Act and **Order 51** of the Civil Procedure Rules seeking among other orders, that this honourable court be pleased to order the Land Registrar Nyeri to dispense with production of the original title to land parcel No. Ruguru/Kiamariga/ 1392.
2. The application is premised on the grounds on the face of the application and is supported by the affidavit of the applicant, Marion Mutunda Gichuru, sworn on **1st February, 2017**.
3. The application is opposed vide the replying affidavit sworn by the respondent on **9th May, 2018**.
4. This suit was filed on **27th May, 2016**. In his plaint, the plaintiff prayed for an order stopping the defendant from subdividing land parcel Rugugu/ Kiamariga/1392 and for the Land Registrar to be prohibited from dealing with the aforesaid parcel. On **30th May 2016**, the plaintiff filed an application seeking similar prayers to those sought in the plaint.
5. The aforesaid motion was heard interparties on **9th November, 2016**. In a ruling dated **9th November 2016**, this court dismissed the application on the other grounds that the applicant had not submitted any proof of the trust he alleged and subdivision of the suit property had already taken place therefore the application had been overtaken by events.
6. The plaintiff has since filed an amended plaint and expanded his prayers to include a declaration that the registration of LR Ruguru/ Kiamariga/1392 and or any other parcel of land resulting from subdivision of the aforesaid parcel is held in trust for him.
7. I wish to point out that this matter has not proceeded for full trial. Pleadings have not closed and a pretrial conference is yet to be conducted. Under the circumstances, I am of the considered view that the instant application is premature as the orders sought can only be granted once hearing of the suit has taken place, evidence adduced, witnesses have testified and the court has pronounced itself.
8. As none of the above has taken place, the application is found to be without merit and is dismissed with costs to the plaintiff/respondent.

Dated, signed and delivered in open court at Nyeri this 24th day of May, 2018.

L N WAITHAKA

JUDGE

Coram:

Mr. Warutere for the defendant/applicant

Geoffrey Muthigani Gichuru – plaintiff/respondent

Court assistant - Esther