



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC CASE NO.856 OF 2017
FORMERLY ELC. CASE NO.1363 OF 2013-NAIROBI

AMOS KIBATA GITHEKO.....PLAINTIFF

-VERSUS-

LOISE GACHIKU KINUTHIA.....DEFENDANT/APPLICANT

AND

AMOS KIBATA GITHEKO..... 1ST DEFENDANT

THE OFFICE OF THE ATTORNEY GENERAL.....2ND DEFENDANT

THE LAND REGISTRAR, KIAMBU.....3RD DEFENDANT

JOSPHAT GACHERU RUGIRI4TH DEFENDANT

RULING

The Plaintiff herein **Amos Kibata Githeko** filed this suit on **6th November 2013** and sought for Judgement against the Defendant **Loice Gachiku Kinuthia** and sought for the various orders. Among the orders sought are:-

a. An order of compelling the Defendant to give vacant possession of LR.Nos.Kabete/Lower Kabete/3162, Kabete/ Lower Kabete/3163 and Kabete/Lower Kabete/3164 to the Plaintiff and in default eviction do issue.

The Defendant, **Loice Gachiku Kinuthia** filed her **Statement of Defence** and **Counter-claim** and averred that the suit property **Kabete/Lower Kabete/47**, later subdivided into **Kabete/Lower Kabete/**

3162, 3163 and 3164 was illegally and fraudulently transferred to the Plaintiff herein. She averred that the said suit property **Kabete/Lower Kabete/47**, belonged to her late husband **John Kinuthia Mbithi** and the purported sale of the suit land by one **Edward Mbithi Kangethe** to the Plaintiff was illegal.

The Defendant also filed a **Counter-claim** and sought for these orders:-

a. An order compelling the 3rd Defendant in the Counterclaim to cancel the registration and transfer of Kabete/Lower Kabete/47 to the 1st Defendant in the counterclaim favour and any subsequent sub-division.

b. A declaration that the Plaintiff in the Counterclaim is the rightful beneficiary and/or owner of the Title No. Kabete/Lower Kabete/47.

The parties have been directed to comply with Order 11 on several occasions. The Plaintiff has filed his bundle of documents but this Court has not seen any compliance on the part of the Defendant.

The dispute therefore is over the ownership of land parcel **Kabete/Lower Kabete/47**, and/or its resultant subdivisions being **Kabete/Lower Kabete/3162, 3163 and 3164**. The Plaintiff has claimed in his **Plaint** that he is the registered owner of the suit property. The suit was filed in the year **2013**.

However the Defendant has alleged that the Plaintiff transferred the suit property to **Josephat Gacheru Rugiri** during the pendency of this suit and thus the said **Josephat Gacheru Rugiri** is a necessary party. The Court has indeed seen the three title deeds issued on **24th February 2017** during the pendency of this suit for **Kabete/Lower Kabete/3162, 3163 and 3164**. The three title deeds are in favour of **Josephat Gacheru Rugiri**. These three parcels of land are the suit properties in issue herein and are being claimed by both the Plaintiff and the Defendant. However the Plaintiff chose to transfer the suit properties to a third party before the matter herein and dispute is finalized. The Court finds that the orders that might be issued by this Court may affect the said **Josephat Gacheru Rugiri**. Therefore the said **Josephat Gacheru Rugiri** is a necessary party herein.

Order 1 Rule 10(2) grants the court discretion to order for joinder of a party who is a necessary party at any stage of the proceedings. It states:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

Though the Plaintiff has objected to the joinder of the said **Josephat Gacheru Rugiri**, he did transfer the suit properties to the said third party while knowing very well the ownership of the same was disputed. The Plaintiff/Respondent did not act in good faith and the Court will overrule his objection and allow the Defendant’s application for joinder of **Josephat Gacheru Rugiri** is a third party.

Further, the Defendant has sought for injunctive orders against the Defendants herein in her Counter-claim restraining any dealings over the suit property. The suit properties are in dispute. The Plaintiff transferred them during the pendency of this suit. There is a possibility that if the same are not preserved they may be disposed off before the suit herein is heard and determined. The doctrine of *Lis Pendens* applies and the purpose of the said doctrine is to preserve the suit property as stated below:-

“The doctrine of *lis pendens* intends to prevent not only the Defendant from transferring the suit property when the litigation is pending but it is equally binding on those who derive their title through the Defendant, whether they had or not had notice of the pending proceedings. Expediency demands that neither party to a suit should alienate his interest in the suit property during pendency of the suit so as to defeat the right of the other party”.

Therefore the Court finds that the necessary order herein that would ensure end of justice is met and prevent abuse of court process as provided by **Section 3A** of the **Civil procedure Act** is to allow the Defendants/Applicant’s **prayer No.3** in totality. **Prayer No.4 can be delt with during the Pre-trial directions.**

Having now considered the **Notice of Motion** dated **18th October 2018**, the **Court finds it merited and it is allowed entirely in terms of prayers No.2 and 3 accordingly. Costs shall be in the cause.**

The Court will issue further directions at the delivery of this Ruling given that this is a **2013 matter** which is **over 5 years** and **should be finalized by 31st December 2018.**

It is so ordered.

Dated, Signed and Delivered at Thika this 6th day of November 2018.

L. GACHERU

JUDGE

In the presence of

Mr. Maina holding brief for Mr. Bosek for Plaintiff/Respondent

Mr. Njanja for Defendant/Applicant

No appearance for Intended 4th Defendant

Lucy - Court clerk

L. GACHERU

JUDGE

6/11/2018