



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO 496 OF 2017

MWANGI RUHOHI..... 1ST PLAINTIFF/RESPONDENT

JULIUS KIRUMA KARIUKI.....2ND PLAINTIFF/RESPONDENT

SOSPETER MAINA NDAUWA.....3RD PLAINTIFF/RESPONDENT

(Suing as the Trustees of Kiwathia Mumbuni Self-help Group formerly

Anjiru a Mbari ya Kiiru Clan)

VS

MUCHIRI KIRUMA.....1ST DEFENDANT/APPLICANT

STEPHEN MAINA MUTHONDU.....2ND DEFENDANT/APPLICANT

DISTRICT LAND REGISTRAR, MURANGA.....3RD DEFENDANT/APPLICANT

RULING

1. On the 4/4/18 the Plaintiffs filed a Notice of Motion seeking orders inter alia that;

a.spent.

b. That pending the hearing and determination of this application inter-partes, this honourable Court be pleased to issue an order of temporary injunction restraining the Defendants herein by themselves, their agents, employees, representatives or any other person acting under their authority from dealing, transferring, disposing or in any other way interfering with parcels of land Title No. LOC 13/GITUGI/2621 and LOC 13/GITUGI/2622 which have been derived from Title No. LOC.13/GITUGI/1655.

c. That leave be granted to the Plaintiffs/Applicants to enjoin the District Land Registrar, Murang'a as a Defendant in this suit and amend the Plaint accordingly.

d. That the District Land inhabitation on the Title No. LOC 13/GITUGI/2621 AND Title No. LOC 13/GITUGI/2622 inhibiting the registration of any dealings with these parcels of land until the hearing and determination of the suit No. ELC 496 of 2017 in this Honourable Court.

e. That the cost of this application be in the suit.

2. On the 18/4/18 the parties through their learned Counsels consented to prayers Nos. b and c above. The Court allowed the application in terms of prayers b and c as above. The Court further directed the Plaintiff to file and serve the amended plaint within 14 days. Equally the Defendants were granted 14 days upon service to file their amended defense. In pursuance of the said orders of the Court the Plaintiffs filed a pleading fashioned "amended Plaint" on the 25/4/18. The said pleading did not conform with Order 8 rule 7(2) which requires that all amendments shall be shown by striking out in red ink all deleted words, but in such a manner as to leave them legible, and by underlining in red ink all added words. On the 16/5/18 the matter came before the Learned Deputy Registrar of the Environment and Land Court who noted the defects and directed the parties to fix a mention date and appear before the Judge for further orders and directions.

3. According to the record the parties appeared before the judge on the 16/7/18 to confirm compliance with the orders of the 18/4/18 and the Defendants' Advocate brought to the Court's attention that the Plaintiffs amended plaint did not obey the provisions of Order 8 rule 7(2) to the extent that the said pleading was not underlined in red thus not showing what the amendments are. The Plaintiff's counsel sought leave of

the Court to comply with the said rules. The Court exercised its discretion and allowed the Plaintiff time to file a proper amended plaint and directed the same to be filed by the 24/7/18. Come the 24/7/18 the Plaintiffs' counsel confirmed to the Court that he had complied and served the Defendants counsel with the amended plaint filed on the 20/7/18.

4. On the 20/8/18 the Defendants Counsel filed a Notice of Motion and sought orders for striking out the Plaintiffs amended plaint dated the 24/4/18 for being filed out of time. The application is premised on the grounds that on the 18/4/18 the Plaintiff was granted leave to file and serve the amended plaint within 14 days. That the Plaintiff filed and served the amended plaint on the 20/7/18 way out of time contrary to the orders of the Court issued on 18/4/2018. That the amended pleading filed on 20/7/18 was filed out of time and the same should be struck out for offending the mandatory provisions of the law and practice.

5. The application is further supported by the affidavit of J N Kirubi Advocate sworn on 17/8/18 and filed on the 20/8/18. The learned Counsel reiterated the grounds aforesaid and urged the Court to strike out the amended plaint filed on 20/7/18 on account of it being filed out of time.

6. Parties elected to file written submissions which I have read and considered. The one key issue that will dispose of this application is whether the amended plaint was filed out of time and without the leave of the Court.

7. Order 8 rule 6 provides as follows;

“Where the Court has made an order giving any party leave to amend, unless that party amends within the period specified or, if no period is specified, within fourteen days, the order shall cease to have effect, without prejudice to the power of the Court to extend the period.”

8. Going by para 3 above the Plaintiff was allowed to file the proper amended plaint within a period of time and a mention date was given to the parties to confirm compliance. Article 159 (2) (d) read together with the overriding objectives of the Court as enacted under section 1A and 1B of the Civil procedure Act requires this Court to do substantive justice to the parties without undue regard to technicalities.

9. In upholding the right of both parties to be heard as enshrined in Article 48 of the Constitution, the Court finds and holds that the amended plaint on record filed on the 20/7/18 is deemed to be duly filed and properly on record. The Plaintiff is directed to serve the same on the Defendant within 7 days from the date of this ruling. Similarly, the Defendant is granted 14 days leave upon service to file their amended defence if any with corresponding leave of 14 days to the Plaintiff to file a reply to the amended defence, if they so desire.

10. The orders issued by this Court on the 8/3/18 staying this suit pending the hearing and determination of the Succession cause in HCCC No 620 OF 2013, Muranga are still in force. Effectively this suit is therefore stayed pending the disposal of the HCCC No 620 of 2013.

11. The application is dismissed with costs to the Plaintiffs/Respondents.

It so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 13TH DAY OF DECEMBER 2018.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Chege for the 1st, 2nd & 3rd Plaintiffs/Respondents.

Kimani James HB for Kirubi for the 1st, 2nd & 3rd Defendants/Applicants

Irene and Njeri, Court Assistants