



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 78 OF 2008

LILIAN JELIMOPLAINTIFF

VERSUS

NANCY CHELIMO TANGU.....1ST DEFENDANT

JOYCE CHEPCHIRCHIR TANGUT..... 2ND DEFENDANT

R U L I N G

By an application dated 30/6/2016 the plaintiff sought the following orders:-

- (a) “That this application be certified as urgent and service of the same be dispensed with in the first instance.**
- (b) That the court order registered against the land Title Number Kitale Municipality Block 1/Lessos/412 be deregistered forthwith pending the hearing and determination of this application inter-partes.**
- (c) Costs be provide for”.**

The application is based on the grounds set out at the foot of the application and is supported by the affidavit of the plaintiff sworn on even date. In that affidavit the plaintiff states that this court ordered a restriction “on the dealing on the suit land herein”. She annexes a copy of a green card which is marked LJ.1. In the same supporting affidavit the plaintiff states that no injunction has been issued against her “as the plaintiff”. She states that it is in the interest of justice that the restriction be removed.

The application is opposed. The second defendant has filed a replying affidavit sworn on the 24th October, 2016.

On the 31st October, 2016 Mr. Kamau appearing for the applicant and Ms. Munialo, appearing for the respondent, consented to the disposal of the application by way of written submissions. The applicant filed her submissions on 15th November, 2016 while the respondents filed theirs on 14th November, 2016.

It is not in dispute that the order subject matter of the application was given on 2nd March, 2010, almost six years before the application at hand was filed. Two other applications have been filed and determined. The plaintiff has also testified in the matter.

Although it was upon the application of the plaintiff that the subject court order was issued it had the effect of binding the parties to the suit to refrain from dealing with land Title **Number Kitale Municipality Block 1/Lessos/412** and **Kitale Municipality Block 1/Lessos/1062** till hearing and determination of the suit. There is no doubt that the court considered the preservation of the subject matter of this suit to be of paramount importance at the time of making that order. It is important to note that the order applied to both the plaintiff and the defendants.

At the time of the making of the order the facts as to registration of the land in question were already on the record. The plaintiff's affidavit in support of the current application adduces no new facts. It also does not set out the particulars of loss and damage suffered or the loss or damage that would be inflicted on the plaintiff if the order remains registered on the land records. Besides, the deregistration of the order would not affect the existence of the court order on the court record. It is possible that deregistration of the order as requested by the plaintiff might lead to dealings with the subject land which may be detrimental to the process of hearing and determination of this suit. As things stand, all unsuspecting members of the public are appropriately notified by such registration that a dispute already exists regarding the said land.

Upon full consideration of the pleadings and other records in this matter, I find that it would not be necessary to disturb the record in the Lands Registry by ordering deregistration of the order before the determination of this suit. In any event, there has been a long delay prior to the filing of the application as the order was registered on the 12th March, 2010. The plaintiff has not sought to explain this delay.

In the circumstances, I find that the application dated 30th June, 2016 is without merit. Consequently I hereby dismiss the application with costs to the defendants.

It is so ordered.

Dated, signed and delivered at Kitale on this **21st day of February, 2017.**

MWANGI NJOROGE

JUDGE

In the presence of:

Mr. Wafula holding brief for Ms. Munialo for the Respondent - present

Ms. Kamau holding brief for Ms. Agisa for the Plaintiff/Applicant - present

Court Assistant - Isabellah

MWANGI NJOROGE

JUDGE

21/02/17