



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
MILIMANI LAW COURTS
ELC CIVIL SUIT NO. 892 OF 2013

AYUB NGIKINYUKIE BARANABA..... PLAINTIFF

=VERSUS=

WILSON KINUTHIA BARNABA.....1ST DEFENDANT

ZAKAYO LONDOGIRANI KAREU.....2ND DEFENDANT

RULING

1. This is a Ruling in respect of a Notice of Motion dated 15th March 2016, in which the applicant seeks the following reliefs:-

a) Spent

b) That interim orders be issued that the Defendants, their agents or servants be restrained from collecting rent from tenants or the subject property LR Dagoretti/ Riruta/S.122 or in the alternative be ordered to deposit all such rent collections in court or through the agent appointed by this court until the suit is determined .

c) That such further or other orders be granted as the Court deems fit.

d) That costs be provided for.

2. The applicant was granted letters of administration ad litem to enable him to carry on with this suit which had been filed by his mother who passed on. The deceased had filed this suit against the Respondents who are her children seeking injunctive relief and removal of a caution lodged against title **No. Dagoretti/Riruta/S.122.**

3. The applicant contends that the Respondents who are his brothers had refused to give access to the deceased or her other children to the suit property and that the Respondents are collecting rental income from the suit property to the exclusion of the other members of the deceased's family.

4. The applicant's application is opposed through a Replying Affidavit sworn by the first Respondent. The Respondents contend that the suit property belonged to their late father Barnaba Kereu .When the father died, the ownership changed to their mother who has since died.

5. The first Respondent went ahead to construct rental premises on their suit property. This action did not

please his deceased mother who threatened to sell the suit property. This prompted the first Respondent to lodge a caution on the title to the suit property. The first Respondent further contends that the suit herein is for removal of a caution he lodged and that it has nothing to do with rent which he collects. That the matter can only be resolved in a full hearing where the issue of ownership will be addressed and determined.

6. I have gone through the applicant's application, the opposition thereto by the Respondents as well as the submissions by the advocates for the parties. I must say at the onset that this is a clear case of abuse of the process of the Court. The advocates in this case have taken sides in a dispute involving siblings to an extent that they even have the audacity to mislead the court in their submissions.

7. The deceased had filed a similar application as in this one. The application is dated 11th July 2014, and filed in court on 18th July 2014. This application was fully heard and a ruling dismissing it was delivered on 18th November 2014. The deceased was represented by the same law Firm as in the present application. In submissions filed in support of the present application, the counsel for the applicant states that there was a previous application filed by the deceased who died before she prosecuted it. This is obviously misleading. In the submissions, the previous application is said to have been filed on 16th June 2015. The truth of the matter is that there was no such application filed on 16th June 2015, by the deceased.

8. The Respondents advocates in their submissions have also claimed that the Plaintiff only sought removal of a caveat and that therefore there is no basis for asking for injunctive orders. Contrary to the contention by the Respondents counsel, one of the prayers in the Plaintiff seeks restraining orders against the Respondents. It is therefore not correct for the Respondents advocate to claim that there is no prayer for injunction.

9. The previous application addressed what the applicant is again claiming. It does not help litigants to keep on filing one application after another. I find that this application is actually *res judicata*. It is therefore an abuse of the process of Court. I proceed to dismiss the same with costs to the Respondents.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* this *16th* day of *March 2017*

E.O .OBAGA

JUDGE

In the presence of ;-

No appearance for the Plaintiff/Applicant

Mr Kassim for M/s Wanjiku for the 1st & 2nd Defendant/Respondents

Court Assistant :Hilda

E.O .OBAGA

JUDGE