



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 2121 OF 2007

SUSAN NYAWIRA..... PLAINTIFF

VERSUS

JAMES KINGAU MUNGAI.....DEFENDANT

AND

JOYCE NYAMBURA WAMAHIU.....1ST INTERESTED PARTY

PETER NJOGU MWAURA.....2ND INTERESTED PARTY

JOSEPHINE WANJIRU MURIUKI.....3RD INTERESTED PARTY

RULING

The Plaintiff and the Defendant are husband and wife. The Plaintiff brought this suit against the Defendant on 18th September, 2007 seeking orders to restrain the Defendant from selling or disposing of all that parcel of land known as L.R No. Darogetti/Uthiru/1423 (“Plot No. 1423”) or any portion thereof. The 1st Interested party was added to the suit on 19th October, 2007 on her own application. On her application to be added to the suit, the 1stInterested Party stated that she was the owner of a parcel of land known as L.R No. Dagoretti/Uthiru/1422 (“Plot No. 1422”) and that the Defendant who had sold the same to her was trying to create a road of access through it. The 1st Interested Party sought to be joined to the suit so as to obtain an order restraining the Defendant from trespassing on the said property. The 2nd and 3rdInterested Parties were added to this suit on 12th November, 2014. In his application to be added to the suit, the 2ndInterested Party claimed that he had purchased Plot No. 1423 from the Plaintiff and the Defendant and had learnt that the Plaintiff had sold the said parcel of land to third parties. The 3rd Interested party on the other hand had contended in her application for joinder that she was the lawful owner of Plot No. 1423. The 3rd Interested Party claimed that she purchased the said parcel of land from the Defendant. The 3rd interested party contended that the dispute over Plot No. 1423 was referred to Kiambu Land Disputes Tribunal (“the tribunal”)by this court where it was heard and determined. The 3rd Interested Party averred that the tribunal made an award on 22nd April, 2009 which was adopted as an order of the court on 15th May, 2009 by the Principal Magistrates Court at Kiambu. The 3rd Interested Party annexed to her affidavit a copy of the tribunal’s award and the decree that was issued by the Principal Magistrate’s Court at Kiambu on 24th September, 2013 upon the adoption of the said award as a judgment of the court. The 3rd Interested Party contended that the reinstatement of this suit on 21st November, 2013 and issuance of further orders after the same had been heard and determined by the tribunal to which it was referred to by this court was without her knowledge and that the facts pertaining

to the tribunal's proceedings were not brought to the attention of the court. The 3rd Interested Party contended that the said decree of the Principal Magistrate's Court at Kiambu had been executed and Plot No. 1423 transferred to her name.

What is now before me is an application brought by the 2nd Interested Party in which the 2nd Interested Party is seeking among others; an order for the review of the orders issued herein on 21st November, 2013 to exclude Plot No. 1422 therefrom, an order directing the Kiambu Land Registrar to remove the caution registered against the register of the said parcel of land and an injunction restraining the Plaintiff from having any further dealings with Plot No. 1423.

The 2nd Interested Party's application was supported by the 1st Interested Party. I have considered the application together with the affidavit filed in support thereof. I have also considered the submissions which were made before me by the 1st and 2nd Interested Parties. The following is my view on the application. From what I had stated earlier, this suit was filed as a result of a dispute which the Plaintiff had with the Defendant over Plot No. 1423. As at the time this suit was filed, Plot No. 1422 was already registered in the name of the 1st Interested Party and there was no dispute over its ownership. The dispute which touched on the said parcel of land related to a road which the 1st Interested Party claimed that the Defendant wanted to create over the said parcel of land. In the present application, the 1st and 2nd Interested Parties have contended that the dispute over the said road has been resolved and as such there is no justification for the continued involvement of Plot No. 1422 in these proceedings. I am in agreement with the 1st and 2nd Interested Parties who had dragged Plot No. 1422 into these proceedings that if the dispute over a road which was to pass through the said plot has been resolved, it is not necessary to continue involving Plot No. 1422 in these proceedings. With regard to the prayer for the removal of cautions registered against the title of Plot No. 1422, I am of the view that the prayer is superfluous. I have noted that the Principal Magistrate Court at Kiambu had made an order on 15th May, 2009 that the said cautions be removed when adopting the award of the tribunal. It is not necessary in the circumstances to make another order for the same purpose.

For the prayer seeking injunction against the other parties to the suit in relation to Plot No. 1423, I am of the view that such order is also not necessary. There is already an order restraining any dealings with the said parcel of land. The order is annexed to the 2nd interested party's affidavit. It is the same order the review of which is sought by the 2nd Interested Party.

The upshot of the foregoing is that the 2nd Interested Party's application dated 11th November 2016 succeeds in part. The same is allowed on the following terms:-

1. The order made herein on 21st November 2013 is reviewed and the part thereof which prohibited any further dealings with L.R No. Dagoretti/Uthiru/1422 is discharged.
2. The costs of the application to be in the cause.

Delivered and Signed at Nairobi this 27th day of June, 2017

S. OKONG'O

JUDGE

In the presence of

N/A for the Plaintiff

N/A for the Defendant

N/A for the 1st Interested Party

Present in person for the 2nd Interested party

N/A for the 3rd Interested party

Kajuju Court Assistant