



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 313 OF 2014

RUTH WANJA MWANGIPLAINTIFF

VERSUS

SAMUEL MWAURA NJUGUNA1ST DEFENDANT

NAIVASHA LAND REGISTRAR2ND DEFENDANT

ATTORNEY GENERAL3RD DEFENDANT

RULING

(An application to compel the second defendant and DCIO Naivasha to produce certain documents; applicant also seeking order that the Registrar of Persons to disclose the identity of the bearer/holder of a certain I.D number; DCIO Naivasha and Registrar of Persons not being parties to the suit; held that DCIO Naivasha and Registrar of Persons cannot be condemned unheard; application dismissed)

1. What is before the court for determination is plaintiff's Notice of Motion dated 18th May 2015 in which the following prayers are sought:

1. THAT this court directs the 2nd Defendant/Respondent to produce documents and/or certified copies thereof of all documents deposited at the District Lands Registry as pertains to parcels of land known as MITI MINGI/MITI MINGI BLOCK 1/311 (MENENGAI) and MITI MINGI/MITI BLOCK 1/312 being sale and transfer documents.

2. THAT this court directs the DCIO Naivasha to produce records of proceedings and/or minutes between the plaintiff and the 1st defendant relating to MITI MINGI/MITI MINGI BLOCK 1/311 (MENENGAI) and MITI MINGI/MITI BLOCK 1/312.

3. THAT this court compels the Registrar of Persons to disclose the identity of the bearer/holder of I.D number 7807163.

4. THAT costs of this application be provided for.

2. The application is supported by the affidavit of the plaintiff who deposes that she is the administrator of the estate of James MungaiIraya alias James MungaiIraya, her deceased father. That the deceased was the owner of parcels of land known as MitiMingi/MitiMingi Block 1/311 (Menengai) and MitiMingi/Miti Block 1/312. That the first defendant fraudulently obtained a title deed for the said parcels of land and that an I.D Number 7807163 which was used in a purported sale agreement between the deceased and the 1st defendant does not belong to the deceased. That a meeting was held at the DCIO's office at Naivasha at

which it was agreed that the 1st defendant would return the parcel of land to the plaintiff. The plaintiff therefore prays for the orders sought in the application.

3. None of the defendants filed any response to the application. A hearing date for the application was taken in court on 17th March 2017 in the presence of advocates for the defendants. When the application came up for inter parte hearing on 10th May 2017 only counsels for the applicant and counsel for the first defendant were present. Counsel for the first defendant informed the court that the first defendant was not opposing the application. The hearing of the application thus proceeded. Counsel for the applicant relied entirely on the application and the supporting affidavit.

4. I have considered the application and submissions made in respect thereof. I note that the Attorney General who is on record for the second and third defendants has not opposed the application. I note further that prayer 1 of the application is directed at the second defendant. Prayer 2 is directed at DCIO Naivasha while prayer 3 is directed at the Registrar of Persons. Both the DCIO Naivasha and the Registrar of Persons are not parties to this suit.

I have perused the plaint herein and I do not see any case pleaded by the plaintiff against the DCIO Naivasha or against the Registrar of Persons. The court cannot issue orders against persons who are not parties to the case before it and who have therefore not been given a hearing. Prayers 2 and 3 of the application are therefore dismissed.

5. The application is brought among others under section 22 of the Civil Procedure Act. The section empowers the court to order discovery. There being no opposition to the application by the 2nd defendant I order the 2nd Defendant/Respondent to produce documents and/or certified copies thereof of all documents deposited at the District Lands Registry as pertains to parcels of land known as MITI MINGI/MITI MINGI BLOCK 1/311 (MENENGAI) and MITI MINGI/MITI BLOCK 1/312 being sale and transfer documents. Costs to the plaintiff.

Dated, signed and delivered in open court at Nakuru this 13th day of June 2017.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff

No appearance for the defendants

Court Assistant: Gichaba