



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 256 OF 2014

WAIRIMU KIMANI.....PLAINTIFF/RESPONDENT

VERSUS

JOSEPH MBURU KIMANI.....DEFENDANT/APPLICANT

RULING

The Respondent (**WAIRIMU KIMANI**) had filed this suit on 17th October 2014 against her son **JOSEPH MBURU KIMANI** (the Applicant herein) claiming that he was registered as proprietor of land parcels No:

1. GICHUGU/SETTLEMENT SCHEME/4806
2. GICHUGU/SETTLEMENT SCHEME/4807
3. “ “ “ /4808
4. “ “ “ /4809
5. “ “ “ /4810
6. “ “ “ /4811
7. “ “ “ /4812
8. “ “ “ /4813 and
9. “ “ “ /4814 (suit properties)

in trust for her. She sought orders that that registration be cancelled and revert to the original parcel No. GICHUGU/SETTLEMENT/SCHEME/835. That claim was dismissed by a judgment delivered on 4th November 2016. There is no evidence to suggest that any appeal has been filed against that judgment or any orders of stay of execution thereof have been granted.

The Applicant has now moved this Court by a Notice of Motion seeking the main remedy that the cautions and restrictions placed by the Respondent on the suit properties be lifted. The application does not cite any provisions of the law but as is clear from the provisions of **Order 51 Rule 10 of the Civil Procedure Rules**, that omission is not fatal to this application.

The Respondent has opposed the application through her replying affidavits dated 27th March 2017 in

which she depones, inter alia, that the Applicant wants the cautions lodged on the suit properties removed so that he can transfer them to his children leaving other beneficiaries landless, that there are other beneficiaries who depend on the suit properties and if the cautions are lifted, they will be rendered destitute. Those beneficiaries are named as **JAMES MUTHIKE KIMANI, JOHN MARAKA KIMANI** and **PETER KARIUKI KIMANI** who have filed **KERUGOYA ELC CASE No. 23 of 2017** a copy of the Originating Summons is annexed thereto.

Though served with the application, the Respondent did not attend Court on 13th July 2017 for hearing. The Court will therefore only rely on the rival affidavits by the parties.

Section 70 of the Land Registration Act provides as follows:

“The registration of an inhibition shall not be cancelled except in the following cases –

(a) on the expiration of the time stated in the inhibition.

(b) on proof to the satisfaction of the Registrar of the occurrence of an event stated in the inhibition.

(c) on the land, lease or charge being sold by a charge unless such sale is itself inhibited;

(d) by a consequent order of the Court”

As the Applicant is the registered proprietor of the suit properties and following the dismissal of the Respondent’s claim thereto by this Court in its judgment dated 4th November 2016, there is no reason why any caution or inhibition placed by the Respondent herein should continue to remain on the suit properties. It is clear from the Respondent’s replying affidavit and the annexed copy of the Originating Summons in **KERUGOYA ELC CASE No. 23 of 2017** that some other persons namely **JAMES MUTHEE KIMANI, JOHN MARAKA KIMANI** and **PETER KARIUKI KIMANI** have filed a suit against the Applicant seeking orders that they have acquired land parcel No. GICHUGU/SETTLEMENT SCHEME/834 in adverse possession having been in un-interrupted occupation of a portion measuring 7.525 acres thereof for over 30 years. It is not clear how that suit has progressed as the Respondent was not in Court to shed light on that. What is clear however, is that land parcel No. GICHUGU/SETTLEMENT SCHEME/834 which is the subject of **KERUGOYA ELC CASE No. 23 of 2017** was never the subject in this suit. In any event, if the plaintiffs in **KERUGOYA ELC CASE No. 23 of 2017** have any interest in the suit properties subject of this case, they are perfectly entitled to place any inhibitions of their own on those properties. What this Court is concerned with in this application are the inhibitions placed by the Respondent on the suit properties. Following the dismissal of the Respondent’s claim to the suit properties vide this Court’s judgment dated 4th November 2016 from which no appeal appears to have been filed, there can be no reason why the inhibitions placed by the Respondent on the suit properties should continue to encumber the same.

I therefore allow the Applicant’s Notice of Motion dated 9th January 2016 and make the following orders:

1. All inhibitions placed on land parcels no. GICHUGU/SETTLEMENT/SCHEME/4806, 4807, 4808, 4809, 4810, 4811, 4812, 4813, and 4814 by the Respondent herein be removed forthwith.

2. No order as to costs.

B.N. OLAO

JUDGE

28TH JULY, 2017

Ruling delivered, dated and signed in open Court this 28th day of July 2017

Applicant present

Respondent absent.

B.N. OLAO

JUDGE

28TH JULY, 2017