

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

ELC NO. 88 OF 2017

GERALD NJERU KAMUMO PLAINTIFF

VERSUS

JANEROSE NJOKI RUTERE DEFENDANT

R U L I N G

1. By a plaint dated 11 May 2017 and purportedly filed on 10 May 2017, that is one day after filing the plaintiff sought the following reliefs;

a) That the caution and restriction placed by the defendant on parcel No. NGANDORI/NGOVIU/5037 be lifted.

b) Costs of this suit be provided for.

c) Any other relief the court may deem fit and just to grant.

2. Simultaneously with the filing of the plaint, the plaintiff also filed an application under certificate of urgency seeking the removal of the caution and restriction registered against the said property on the basis that he was the registered proprietor thereof and that the defendant, who was his estranged wife, had no legitimate reason to place the caution.

3. The said application was supported by an affidavit sworn by the plaintiff on 11 May 2017 in which he stated that he wanted to subdivide his said parcel of land so that he could give a share to his children. He attached a copy of a certificate of official search which indicated that the land measured about 0.47 ha and that a restriction had been entered at the instance defendant on the basis of a letter she had lodged with the Land Registrar. However, the defendant did not exhibit a copy of the said letter for court to know the nature of interest the defendant was claiming.

4. When the said application came before me on 10 May 2017 under certificate of urgency, the court declined to certify it as urgent since there were no reasons disclosed therein to establish any urgency in the removal of the said restriction. The matter ultimately came before me through a normal listing for *interpartes* hearing on 13 Jul 2017. On that date, only the plaintiff attended court to prosecute his application. The defendant did not attend court and neither did she file any response in opposition to the said application.

5. At the hearing hereof, the plaintiff urged the court to allow the said application to enable him subdivide his land and share it with his children who were aged 23,18,13 and 6 years respectively. He informed the court that the defendant who was his wife for 13 years had left him and left behind the four (4) children.

6. The court has carefully considered the said application and noted that there is no opposition thereto. However, the court is not inclined to grant the same because the plaintiff is trying to obtain a trial and disposal of his case through an application. As pointed out earlier in paragraphs 1 and 2 hereof, the plaintiff is essentially seeking the same prayers in both the suit and application. If the prayers in the application are granted, that would in effect dispose of the entire suit and there would be nothing to be set down for hearing. That is not permissible in law.

7. The upshot of the foregoing is that the court shall disallow the said application and instead ask the

plaintiff to prepare his suit for hearing. The Notice of Motion dated 11 May 2017 is consequently dismissed with no order as to costs since the defendant did not respond thereto.

8. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 3RD DAY OF October 2017.

In the presence of the Plaintiff and in the absence of the Defendant. The Notice of Motion dated 11 May 2017 was dismissed with no order as to costs.

Court Clerk Njue/Leadys.

Y.M. ANGIMA

JUDGE. – 3.10.2017