



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NYERI
ELCA CASE NO. 5 OF 2017
(Formerly NYERI HCCA 41 OF 2011)

JOYCE MWIHAKI.....APPLICANT

-VERSUS-

MARY NYOKABI KIBUNJA.....RESPONDENT

AND

DANIEL KAGIRI GICHAMBA.....APPLICANT

RULING

1. Before me are two applications . The notice of motion dated **23rd January, 2017** brought under **Section 70** of the Land Registration Act 2017 by Daniel Kagiri Gichamba and the motion dated **5th June, 2017** brought under **Order 45 Rule 1** of the Civil Procedure Rules by Samuel Gitonga Nyahoro. Both applications seeks the following orders;

(a) That the order of prohibition made herein on 28th November, 2013 and confirmed on 11th December, 2013 prohibiting any dealings with the parcel of land L.R. No. Nyeri/Naromoru/100 (since subdivided) be discharged.

(b) That costs be provided for.

2. The applications are premised on the grounds that the applicants are the registered proprietors of LR NO.Nyeri/Naromoru/4039 and LR NO. Nyeri/ Naromoru/4036 which are resultant plots of LR NO. Nyeri/Naromoru/100 after subdivision; that orders of prohibition were issued and registered when the original suit property had already been subdivided and the applicants registered as proprietors of their respective parcels; that the aforesaid order has affected the applicants parcels of land whereas they were not parties to the suit.

3. The applications are supported by affidavits sworn on 23rd January, 2017 and 5th June, 2017. Both applicants depone that they purchased their respective portions in the year 2012, but in 2013 an order was issued prohibiting any dealings with the suit property until disposal of the appeal; that the order was subsequently registered against all titles resulting from the subdivision of LR NO. Nyeri/Naromoru/100.

4. The applications are opposed through grounds of opposition dated **30th January, 2017** and filed on **31st January 2017** that:-

(i) The application is bad in law, frivolous and a gross abuse of court process.

(ii) The applicant is not a party to this suit thus the applicaiton is misconceived.

5. During the hearing of the applications , counsels for the respective parties chose to rely on their pleadings.

6. The instant suit was first heard and determined in the lower court. Dissatisfied, Joyce Mwihiaki filed an appeal which was heard and a judgment rendered on 20th June, 2014. In the aforesaid judgment, **Ombwayo J**, allowed the appeal and upheld the existing trust. The appellant Joyce Mwihiaki was found to be entitled to a life interest in the whole residue of the net intestate estate of her husband and the estate of Simon Kibunja. This judgment remains in place to this date. This suit has therefore been concluded.

7. I have considered the two applications, the grounds, supporting affidavits together with the grounds of opposition. It is not in dispute that the suit was between Joyce Mwihiaki and Maria Nyokabi in the lower court and on appeal. It is also not in dispute that the applicants were not parties in the suit although both applicants were issued with their respective titles in 2012 and 2013 when the appeal was ongoing and were both aware of the appeal as admitted in paragraphs 3, 4 and 5 of their supporting affidavits.

8. A person who is not a party to a suit and who will be affected by any order of the court should apply to be enjoined in a suit while it is still pending so that his/her interests can be considered when the court delivers judgment. If such a person well aware of a pending suit whose outcome will affect his interest fails to apply to be made a party during the pendency of the suit, then such a person lacks the *locus standi* to move the court after judgment unless that judgment is set aside. Under the circumstances, I find the applicants not to have *locus standi* and I dismiss their applications with costs to the appellant/respondent.

Dated, Signed and Delivered at Nyeri this 14th day of November, 2017.

L N WAITHAKA

JUDGE

dCoram:

Ms Mwangi h/b for Ng'ang'a Munene for the respondent

N/A for applicant

Court assistant - Esther