



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 61 OF 2013

MARTHA WAMBUI KURIA.....PLAINTIFF

VERSUS

JOHN HUMPHREY MUGO.....1ST DEFENDANT

JOHN KAMANJA.....2ND DEFENDANT

BERNARD GIKONYO.....3RD DEFENDANT

FRANCIS MARAGUA.....4TH DEFENDANT

RULING

(Application to enjoin persons as interested parties; suit by plaintiff against defendants for trespass; matter seemingly a dispute over the positioning of a road of access; dispute may affect the neighbouring land owners; court earlier directing plaintiff to consider enjoining them; plaintiff filing this application to enjoin the neighbouring land owners; application allowed)

1. The application before me is that dated 3 February 2015 filed by the plaintiff. It seeks orders that Victor Gatimu, Fridah Mugane and Stephen Mwangi be enjoined to this suit as interested parties. The basis for the said application is that by a ruling dated 10 October 2014, the court directed that the said parties be enjoined since they may be affected by the litigation. The application is not opposed by either party.

2. I have perused the record and observed that the suit herein was commenced by way of plaint filed on 22 January 2013. In the plaint the plaintiff has claimed to be the owner of the land parcel Ndundori/Lanet Block 1/51 (Nyangui) measuring 1.051 Hectares. It is pleaded that the plaintiff also owned the Plot No. 49 which is adjacent to this parcel No. 51 but that she sold it to a third party in the year 1988. It is pleaded that in the year 2006, the four defendants invaded the plaintiff's land and dug trenches to divert a seasonal stream into the plaintiff's land. It is further pleaded that in the year 2012, the defendants forcefully trespassed into the plaintiff's land and opened up an illegal road along the boundary with the parcel No. 49 using a false map. In the suit, the plaintiff has asked for orders that the defendants be permanently restrained from her land; an order directing the defendants to restore the waterway diverted into her land to its original course; and general and exemplary damages for trespass.

3. The defendants filed a joint statement of defence. They pleaded inter alia that the plaintiff grabbed the access road meant for use by the public and converted the same to be part of her land. They however

denied invading the plaintiff's land or digging trenches or diverting the seasonal stream. They pleaded that any road created is valid and reflected in the maps.

4. Together with the suit, the plaintiff filed an application for injunction seeking to have the defendants restrained from her land pending hearing of the suit. In the course of hearing the application, my predecessor, Honourable Justice Waithaka, made an order directing survey of the land in dispute so as to establish whether the defendants have created a public road of access through the plaintiff's land and whether they have diverted the river. The surveyors were also ordered to establish the boundaries of the land in issue. Three survey reports were filed, one by a surveyor appointed by the plaintiff; one by the surveyor appointed by the defendant; and the last by the District Surveyor. The court delivered its ruling on the application for injunction on 10 October 2014. In her ruling, the Honourable Judge observed that the defendants' identity was not clear and they only appear to be residents of the area who use the access road in issue. She was of the view that it would be vain to issue an order of injunction only against the defendants since the dispute appeared to concern the whole community. She was of the view that the survey reports filed raised issues that must be addressed and the owners of the Plots No. 49, 425, 486, 487 and 488, mentioned in the reports may be adversely affected by any order made by the court. The plaintiff was advised to consider bringing them on board.

5. The persons that the plaintiff seeks to enjoin as interested parties are the owners of the Plots No. 49, 487, and 486. As I had earlier mentioned, the application is not opposed by the defendants. The intended interested parties do not also oppose the application.

6. On my part, I see no reason why I should decline the application. It does appear to me that the presence of the intended interested parties is necessary so as to determine the dispute at hand. I allow the application and order the three persons to be enjoined as interested parties. They are free to file pleadings either in support of the plaintiff or defendants as they may so wish. They are also at liberty to tender evidence in this suit.

7. As to costs, I make no orders.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 22nd day of September 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr. Ngamate holding brief for Mr. Opar for defendants.

No appearance on part of M/s Lawrence Mwangi for plaintiff/applicant

C/Asst: Janet

MUNYAO SILA

JUDGE

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