



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NYERI

ELC NO 724 OF 2014

BETHWEL MWANGI GITHINJI 1ST PLAINTIFF

STEPHEN MUGANE 2ND PLAINTIFF

WILLIAM KING'U KARANJA 3RD PLAINTIFF

-VERSUS-

HARRISON WACHIRA WANJOHI 1ST DEFENDANT

BERNARD MWANGI NGUNJU 2ND DEFENDANT

RULING

1. On **24th February, 2015** this court confirmed the orders issued on 19th February, 2015 by consent as follows:

“That pending the hearing and determination of the suit, an order is issued restraining the respondent/ defendant or his servant/agents from inviting and allowing other person(s) to occupy the said parcel of land.”

2. Parties were given time lines within which to comply with **Orders 7 and 11** of the Civil Procedure Rules and take a date for pre-trial in the registry.

3. On 10th October, 2015 the respondent visited the Land Registrar, Murang'a who registered the following remarks against the title for Loc/14 Kamune/1015 -

“court order – No dealings with this title until the suit No. ELC 724 of 2014 at Nyeri is determined”.

4. The above remarks registered against the title of the suit property is what prompted the filing of the instant motion dated 29th February,2016 seeking the following orders;

1. That the Land Registrar Murang'a and the Hon. Attorney General be enjoined as third parties in this suit.

2. That this Honourable court may be pleased to authorise the Land Registrar, Murang'a to remove the order registered on 1st October, 2015 against land reference Loc. 14/Kamune/2487 by the Land Registrar, Murang'a.

3. That the costs of this application be provided for.

5. The application was argued before me on **7th October, 2016**. **Mr. Gori**, counsel for the applicant, urged the court to grant the applicants prayers 1 and 2 for the reasons that the respondent had mischievously registered the order issued on 9th February, 2015 against the title as follows;

“court order – No dealings with this title until the Suit No. ELC 724 of 2014 at Nyeri is determined”.

6. As a result of the restriction placed against the title, the plaintiff had been unable to access any funds from the bank and has therefore suffered irreparable loss.

7. **Mr. Mwaniki** counsel for the respondent, submitted that he had registered the order against the title to preserve the suit property from alienation by the applicant. He further stated that he had found it unwise to move the court and obtain similar orders in favour of the respondent.

8. Regarding prayer 1 sought in the motion, that the Land Registrar Murang'a and Hon. Attorney General be enjoined as parties in this suit, he submitted that they were not necessary parties because no substantive orders had been sought against them in the plaint.

9. Mr. Gisemba who represented the proposed parties (the Land Registrar Murang's and the Hon. Attorney General) to be enjoined did not oppose the application.

10. In a rejoinder, Mr. Gori submitted that the Land Registrar Muranga and Hon. Attorney General were necessary parties but only in the application for the purpose of removing the order registered against the title.

11. I have considered the application, the grounds on its face, the supporting affidavit and the annexures. I have also considered the grounds of opposition filed by counsel for the defendant dated **5th April, 2016** and the oral submissions by the counsels on behalf of their respective parties.

12. Regarding prayer 1, I do not find the Land Registrar Murang'a and the Hon. Attorney General necessary parties in this suit as the prayers sought in plaint are only against the 1st and 2nd defendants.

13. Regarding the action taken by counsel for the defendants in registering an order against the title for the suit property I find that action to be mischievous to say the least. The restraining orders issued on 25th February, 2015 were issued against the defendants. If counsel for the respondent wanted to reverse this position, the proper way to do so would have been to move the court by filing an application seeking orders to set aside and/or vacate the earlier order issued on 25th February, 2015 but not to register that order against the title in favour of his client.

14. I am satisfied with the reasons given by counsel for the applicant on why the order registered on 1st October, 2015 should be lifted. I hereby issue an order that the remarks registered on 1st October, 2015 against the title for Loc/14 Kamune/1013 by the Land Registrar, Murang'a be removed.

15. Parties having complied with the requirements of **Order 11**, a hearing date for the suit to be taken in the registry once the diary for 2017 opens.

Dated, signed and delivered this 7th day of October, 2016 in Nyeri Environment and Land Court.

L N WAITHAKA

JUDGE

In the presence of:

Mr. Macharia h/b for Mr. Gori for plaintiff/applicants

Mr. Mwaniki for defendants

Mr. Gisemba for the 3rd and 4th defendants

Court assistant - Lydia