



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 51 OF 2014 (O.S)

JOHN MWANGI NDEGWA.....PLAINTIFF

VERSUS

ELIUD MACHARIA MAINA.....DEFENDANT

KANYI GICHUHI.....INTERESTED PARTY

RULING

On 4th December 2015, this Court delivered a judgment granting the applicants orders as sought in their Originating Summons filed herein on 27th February 2014. Those orders were:-

- 1. A declaration that the title of the said WAIRATU WAIMIRI, now deceased, to a portion measuring zero point five (0.5) acres or thereabout out of land parcel No. LOC 15/GEITWA/70 and which portion is well defined and occupied by the applicant has been extinguished by the applicant's adverse possession thereof for a period of more than 12 years in terms of Section 17 and 38 of the Limitation of Actions Act.***
- 2. A declaration that the applicant has acquired title to the said portion measuring approximately zero point five (0.5) acres out of land parcel No. LOC 15/GEITWA/70 by his adverse possession thereof for a period of more than 12 years from the year 1994 or thereabout to-date.***
- 3. An order do issue requiring and directing the Land Registrar Muranga to sub-divide land parcel No. LOC 15/GEITWA/70 in such a manner that the portion of zero point five (0.5) acres aforesaid is excised from the said land parcel and to register that portion in the name of the applicant JOHN MWANGI NDEGWA in place of WAIRATU WAIMIRI, deceased, and in place of any other person succeeding the said WAIRATU WAIMIRI.***
- 4. Each party was ordered to meet their own costs.***

A decree to that effect was subsequently issued and signed by the Deputy Registrar of this Court. There is nothing on the record to show that any appeal was preferred against that judgment.

The applicant has now filed a Notice of Motion citing **Section 14 of the Environment and Land Court Act, Sections 1A, 1B, 3A and 38 of the Civil Procedure Act** seeking the following orders:-

- 1. The title of KANYI GICHUHI the interested party herein to land parcel No. 15/GEITWA/70 be cancelled and the title be reinstated into the name of WAIRATU WAIMIRI to facilitate execution of the decree issued herein and for that and any other connected purposes to dispense with production of the interested party's title deed for cancellation.***

2. That this Honourable Court do issue an order authorizing and directing the Deputy Registrar of this Court to execute on behalf of the defendant and/or interested party, all documents necessary or required to carry out the decree herein and to sub-divide land parcel No. LOC 15/GEITWA/70 into two portions of zero point five (0.5) acres each and thereafter to transfer the portion occupied by the plaintiff/applicant into the name of JOHN MWANGI NDEGWA.

3. In the alternative and without prejudice to the foregoing, the interested party himself be ordered to transfer the portion of zero point five (0.5) acres out of land parcel No. LOC 15/GEITWA/70 to the plaintiff/applicant without demanding any money from the plaintiff/applicant subject only to payment of all official fees, survey and registration fees and in default, the Deputy Registrar of this Honourable Court to execute the necessary documents on his behalf.

The application was premised on the grounds set out therein and supported by the applicant's affidavit.

In brief, the applicant has a decree in this case awarding him 0.5 acres out of land parcel No. LOC 15/GEITWA/70. At the time of filing this suit, that land (the suit land) was registered in the names of the respondent herein. However, after obtaining that decree, the applicant presented it to the Land Registrar Muranga so that a restriction could be registered on the title only to discover that the respondent had transferred the suit land to the interested party on 12th January 2015 while judgment was still pending in this Court.

Neither the respondent nor the interested party filed any response to the Notice of Motion even after having been given two months (from 13th October 2016 to 7th December 2016) to do so. The Notice of Motion is therefore not opposed.

I have considered the Notice of Motion, un-opposed as it is. I am however un-able to grant the orders sought for the main reason that the party referred to herein as an "**interested party**" i.e. **KANYI GICHUHI** has never been properly enjoined in these proceedings as an interested party. He is therefore a stranger to these proceedings and no order can be issued against him in the circumstances.

Secondly, the decree issued herein only involved the applicant and the respondent following the judgment delivered on 4th December 2015. It is clear from the record herein that in order to defeat this judgment, the respondent transferred the suit land to the said "**interested party**" on 12th January 2015. Indeed it is clear that even as the parties were litigating in this Court, the respondent had long transferred the suit land to **KANYI GICHUHI**. No wonder neither him nor the respondent found it necessary to file any response to this application. I have no doubt therefore that the transfer of the suit land to **KANYI GICHUHI** was done deliberately to frustrate the applicant herein. Nonetheless, since the said **KANYI GICHUHI** is now the registered proprietor of the suit land, it would not be proper to cancel the title and reinstate it in the names of **WAIRATU WAIMIRE** or even order the Deputy Registrar to execute any documents of transfer on behalf of the said **KANYI GICHUHI** as he was not a party to these proceedings. The applicant ought to have taken that precaution of restricting the suit land pending the hearing and determination of this suit. However, this Court will not sit and watch as parties engage in conduct to frustrate its lawful orders. The applicant is within his rights to pursue a fresh claim against the said **KANYI GICHUHI** because change of ownership of land in adverse possession does not defeat a claim of the adverse possessor, I will therefore invoke my inherent jurisdiction donated by **Section 3A of the Civil Procedure Act** to make orders to prevent an abuse of this Court's process.

Ultimately therefore, upon considering the applicant's Notice of Motion dated 15th June 2016, I make the following orders:-

1. The Notice of Motion is dismissed with no orders as to costs.

2. To prevent the abuse of this Court's process, an order of inhibition is hereby placed on the land parcel No. LOC 15/GEITWA/70 inhibiting the registration of any dealings with the said land. That order is to last 12 months from to-day to enable the applicant file and prosecute his

claim against the said KANYI GICHUHI, if he decides to do so, in which case, an extension of the said order can be sought in the fresh suit.

It is so ordered.

B.N. OLAO

JUDGE

9TH DECEMBER, 2016

Ruling delivered, dated and signed in open Court this 9th day of December, 2016

Mr. Gichuki for Plaintiff absent but Plaintiff present in person

Defendant absent

Interested party absent.

B.N. OLAO

JUDGE

9TH DECEMBER, 2016