



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 297 OF 2014

MTURIARU MTUGACHARA1ST PLAINTIFF

HANNAH MUKAMI KIMATTA.....2ND PLAINTIFF

VERSUS

ATTORNEY GENERAL1ST DEFENDANT

DISTRICT SURVEYOR NYANDARUA2ND DEFENDANT

DISTRICT LAND REGISTRAR NYANDARUA.....3RD DEFENDANT

ESTATE OF JOSEPH KIMEMIA MIGWI4TH DEFENDANT

RULING

(Application for injunction; plaintiffs having a decree stating how to subdivide land; plaintiffs arguing that the subdivision went against the decree; plaintiffs seeking to stop any further subdivisions pending hearing of suit; prima facie case established; application for injunction allowed)

1. This suit was filed on 28 October 2014 by way of plaint. The case of the plaintiffs as pleaded is that through an award of the Land Disputes Tribunal, which was adopted as a decree of the court in Nyahururu Principal Magistrates Court Land Dispute Case No. 9 of 2006, it was ordered that the land parcel Nyahururu/Sabugo/301 be sub-divided among 7 persons as follows :-

- (a) Joseph Kimemia Migwi - 32 acres
- (b) Kimatta Mukanu - 8 acres.
- (c) Simon Mwangi Theuru - 4.5 acres
- (d) Richard Karanja Maina - 4 acres
- (e) David Wachira Muchoku - 3 acres
- (f) Jackson Njoroge Riaru - 3 acres
- (g) Mturiaru Mtugachara - balance.

2. The complaint of the plaintiff is that despite this decree, the 2nd and 3rd defendants, who are the District Surveyor and District Land Registrar, Nyahururu, in collusion with the 4th defendant, proceeded to subdivide the land parcel Nyandarua/Sabugo/301 into two new portions, namely Nyandarua/Sabugo/3615 and 3616, which subdivision was not in accordance with the decree. In their suit, the plaintiffs want a declaration that the subdivision did not follow the decree and they want the same nullified.

3. Together with the plaint, the plaintiffs filed an application for injunction, to restrain any further subdivision of the land parcels 3615 and 3616 pending hearing of the suit. No reply to the application was ever filed by any of the defendants. Indeed, only the State Law Office has so far entered appearance for the 1st, 2nd and 3rd defendants, and have filed defence which is a bare denial.

4. The facts as enumerated by the plaintiffs are therefore uncontroverted. I cannot at this point in time make a final determination on whether or not the subdivision was in accordance with the decree, but I think the plaintiffs have tendered some material to demonstrate that the subdivision was not in line with the decree. For starters, the decree provided for subdivisions into 7 portions, and it has not been explained why the District Surveyor and District Land Registrar, only thought of carving out two parcels. It has been mentioned, and it has not been controverted, that even this subdivision, in favour of the 4th defendant, was not in line with the decree. In my view the plaintiffs have established a prima facie case with a probability of success and are deserving of the injunction sought.

5. I therefore allow this application and order that there be no further subdivisions of the land parcels Nyandarua/Sabugo/ 3615 and 3616. I further issue an order of inhibition, inhibiting the registration of any disposition in the register of these two parcels of land.

6. The costs of the application shall be in the cause.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 24TH day of September 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr Kimatta for the plaintiffs/applicants

Mr. Mbaka of state Law office for 1st - 3rd respondents

N/A for 4th respondent

Janet: Court Assistant

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU