

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT AND LAND COURT
CIVIL CASE NO.4 OF 2009

VIRGINIAH NJERI NDUNGU)

PETER MBURU NDUNG'U).....PLAINTIFFS

VERSUS

SAMSON WAWERU

SAMSON WAWERU GITAU.....DEFENDANTS

AND

ESTHER NJERI WAWERU.....INTENDED THIRD PARTY

AND

PAUL MAINA NDUNG'U

STEPHEN MBUGUA NDUNG'U.....APPLICANTS

R U L I N G

The application dated 22/2/2013 is not opposed. There is an affidavit of service on record. The applicant prays for orders that leave be granted to extend time and/or substitute the 2nd defendant with the intended third party and to substitute the 1st plaintiff with Stephen Mbugua Ndung'u and Paul Maina Ndung'u. Moreover that a restriction be placed in Murang'a Lands Office against land parcel LOC.7/KAMAHUHA/644 till this application is heard and determined. Lastly that Status quo be maintained in the suit land till this case is heard and determined and any party failing to comply with the said court order be jailed for contempt.

The application is based on grounds that both the 1st plaintiff and 2nd defendant are deceased and that the case involves fraud whereby the 2nd defendant changed his names by an affidavit to read the 1st defendant to acquire the suit land. The said 2nd defendant died soon thereafter before this suit commenced. The intended third party is the wife of the 2nd defendant and has been using all means to circumvent justice. The 2nd defendant had at once issued a notice of eviction to the plaintiffs. He is also alleged to have fraudulently used a correction of name clause to have the suit land transferred to his name and is a stranger to the suit premises and only used mischief due to the similarity of his name Samson Waweru Gitau to the original proprietor Samson Waweru. The plaintiffs claim to be the rightful owners of the suit land and believe that only a jail term can stop the intended third party from doing mischief. There is a danger of the suit land being disposed, sold and alienated to further parties to defeat the court process. The intended third party ought to be enjoined in this suit to conclude this matter. The plaintiffs fear that they will suffer irreparable loss and damage.

I have considered the application, the supporting affidavit and do find the same to be merited and same is granted as prayed.

Dated, signed and delivered at Nyeri this 20th day of June 2014.

A. OMBWAYO

JUDGE