



REPUBLIC OF KENYA

High Court at Kerugoya

Environmental & Land Case 35 of 2012

JOHNSON hhhMURIITHI KINYUA.....PLAINTIFF

VERSUS

LEONARD MUCHIRI MUTUGI.....DEFENDANT

RULING

This is in respect of the applicant's application dated 26th November, 2012 seeking a prohibitory order on L.R. No. MUTIRA/KATHARE/114.

I have considered the application together with the rival affidavits and submissions herein.

What comes out clearly from the annexures herein is that indeed there was an agreement between the plaintiff/applicant and one MUTUGI KABUTU who is the defendant/respondent's father whereby the deceased borrowed some Ksh. 25,000/= from the plaintiff/applicant and offered as security land parcel No. MUTIRA/KATHARE/738 which would be transferred to the plaintiff/applicant in case of default. The defendant/applicant later had all the deceased's properties combined and registered as L.R. No. MUTIRA/KATHARE/114 which process was done fraudulently and for which the defendant/respondent was charged in Kerugoya Senior Principal Magistrate Criminal case No. 1050 of 2010, convicted and placed on probation. This conviction is, in my view, relevant as it touches on the subject matter of this case.

Having considered all the above, I find that the applicant is entitled to the orders sought in this Notice of Motion dated 26th November 2012. There is un-rebutted evidence that on 9th June 2000, the plaintiff/applicant and the defendant/respondent's father (now deceased) entered into agreement that land parcel No. MUTIRA/KATHARE/738 would be transferred to the plaintiff/applicant should there be a default in repayment of a loan of Ksh. 25,000/=. The agreement was to bind not only the defendant/respondent's father but also his successors, heirs and assigns. Clearly, the plaintiff/applicant has a valid interest in the land parcel No. MUTIRA/KATHARE/114 which ought to be protected until this suit is heard and determined. Looking at the pleadings herein, this is a matter that perhaps the Advocates on record should consider advising their clients to reach some amicable settlement. I think substantial justice will be done if that route is taken. The court will also play its role in that direction at the appropriate time.

For now, the application dated 26th November, 2012 is allowed. Costs in the cause

B.N. OLAO

JUDGE

15/4/2013

15/4/2013

Before B.N. OLAO – JUDGE

CC – Muriithi

Mr. Kahiga for Nganga for Applicant – present

Respondent – present in person

COURT: Ruling delivered this 15th April 2013 in open Court.

B.N. OLAO

JUDGE

15/4/2012

COURT : Further mention on 14/5/2013 as the parties have agreed to my suggestion to settle matter amicably.

B.N. OLAO

JUDGE

15/4/2013