



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**

**E & L CASE NO 71 OF 2012**

SUSY RUGURU NKANATA.....1ST PLAINTIFF

FRIDAH KAJUJU KINYUA.....2ND PLAINTIFF

WINFRED KANARIO KIRIMI.....3RD PLAINTIFF

**VERSUS**

SILAS KIRIMI NKANATA.....1ST DEFENDANT

JANE KINANU RUTERE.....2ND DEFENDANT

**R U L I N G**

This application brought to Court under the cited provisions of the law is dated 31st August, 2012 and seeks orders:-

1. ***THAT this application be certified urgent and the same be heard during the vacation.***
2. ***THAT on the first instance this application be certified as urgent and the same be heard *ex parte* due to its urgency.***
3. ***THAT this Honourable Court be pleased to issue orders of temporary injunction to restrain the 2nd defendant by herself, her agents, servants, employees or anybody else whatsoever acting under her directives, names or instructions from interfering, evicting and, cultivating L.R NO. NKUENE/URUKU/1979 currently occupied by the plaintiffs or in any other way interfering with the Plaintiffs use and occupation of the said parcel of land pending the hearing and determination of this application.***
4. ***THAT this Honourable Court be pleased to issue an order of inhibition and the same be registered against L.R NO NKUENE/URUKU/1979 currently registered in the name of the 2nd defendant to stop any dealings and/or transfer of the same pending the hearing and determination of this application.***
5. ***THAT this Honourable Court be pleased to issue an order of temporary injunction to restrain the 2nd defendant her agents or any other person acting under her names from selling or any other way interfering with L.R NO. NKUENE/URUKU/1979 pending hearing and determination of this case.***
6. ***THAT this Honourable Court be pleased to issue any or better orders as it may deem fit and just to meet the ends of justice.***

7. ***THAT*** the costs of this application be provided for.

The application is supported by the Affidavit of SUSY RUGURU NKANATA and has the following grounds:

- a. ***The 2nd defendant is intending to occupy forcefully L.R. NO NKUENE/URUKU/1979 which is currently occupied by the 1st Plaintiff and her family.***
- b. ***That the plaintiffs occupation of the suit land can be verified by this Honourable Court visiting the said land.***
- c. ***The said land LR. NO. NKUENE/ URUKU/1979 belongs to the Plaintiffs and the 1st defendant as the latter held the same in trust for himself and the plaintiffs as it belonged to 1st defendant's deceased father but he has fraudulently transferred the same to the 2nd defendant.***
- d. ***The Plaintiffs and their family will suffer irreparable loss and damage if the 2nd defendant is allowed to occupy the land before this case is heard and determined.***
- e. ***It is necessary to preserve the status quo of the suit land as the plaintiffs have been in occupation of the suit land for a long time the same being matrimonial property.***
- f. ***The Plaintiffs have on the suit land homestead , food crops, trees and other properties .***
- g. ***That the 2nd defendant is threatening the plaintiffs with arrest with a view of occupying the land and the Provincial Administration is not willing to assist.***
- h. ***The plaintiffs have a prima facie case with a high probability of success.***
1. ***Unless the orders sought herein are issued the 2nd defendant will achieve her heinous acts and evict the Plaintiffs from the land as the police are also not willing to assist.***
- j. ***The 2nd defendant does not live or occupy parcel of land No. NKUENE/URUKU/1979.***

Prayers 1,2, and 3 are spent. Prayer 2 was granted by the Hon. Lady Justice H. I Ongundi on 13th September, 2012.

The parties are agreed that the plaintiffs are in occupation of the suit land. The 2nd defendant claims that she had utilized the suit land from the time she bought the same in April, 2012 until September, 2012 when she vacated the land upon being served with a Court order. The Plaintiff is the estranged wife of the 1st defendant and she is mother to the 2nd Plaintiff. The 3rd Plaintiff is a brother to the 3rd defendant.

The 2nd defendant claims that she bought the suit land from the 1st defendant.

I have carefully considered the pleadings proffered by all parties. Issues such as whether or not the suit land is family/ ancestral land can only be determined after the main suit has been heard. The status of if or not the 2nd defendant is a purchaser for value and is protected by the apposite provisions of the Land Registration Act and Article 40 of the Constitution of Kenya 2010, can only be determined after evidence is tendered at the hearing of the suit.

I need not reinvent the wheel. The Court of Appeal in the case of Mbuthia Versus Jimba Credit Corporation [1988] KLR 1 gave erudite guidance regarding how applications for interlocutory injunctions should be handled. It opined as follows:-

***“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issue of fact, but rather to weigh up the relevant strength of each side's propositions. The lower court judge had gone beyond his proper duties and made final findings of fact on disputed affidavits.”***

Many of the issues raised by the parties in this application can only be determined after parties have tendered evidence. The report of this Court's Deputy Registrar dated 3rd May, 2013 is unequivocal that the suit land is occupied by the Plaintiff and her 2 sons Martin Mwenda and Dennis Mutuma.

I have considered, as I have already said, the pleadings filed by the parties. I have also considered the authorities proffered by the parties in support of their assertions. I find that the weight of the propositions offered by the plaintiffs persuades me to allow their application. I have considered that they have been in occupation of the suitland since at least the year the 2012 when the 2nd defendant claims that she ceased to utilize the suit land.

I grant prayers 4 and 5.

Costs shall be in the cause.

It is so ordered.

**DELIVERED IN OPEN COURT AT MERU THIS 21ST DAY OF APRIL, 2016 IN THE PRESENCE OF:-**

CC: Daniel/Lilian

Nyauchi for the Defendants

Miss Wanjohi for the Plaintiffs

**P.M. NJOROGE**

**JUDGE**