



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

**HCC 115 OF 2012**

**ESTHER NKATHA MUKINDIA.....PLAINTIFF**

**VERSUS**

**JULIUS KAAI MUNYUA & 3 OTHERS.....DEFENDANTS**

**RULING**

This application is dated 28.5.2012 and seeks orders that:

- 1. THAT this application be certified urgent and the same be heard ex-parte in the first instance.***
- 2. THAT this honourable Court be pleased to issue an order of temporary injunction restraining the defendants by themselves, their agents, relatives, employees and/or anybody else whomsoever acting on their behalf from entering, remaining, on, disposing of, cultivating, building, fencing and/or in any other way howsoever interfering with the plaintiff's user and enjoyment of her part of land parcel No. NYAKI/NKABUNE/128 OR ITS SUB-DIVISION L.R. NO. NYAKI/NKABUNE/1000, 1001, 1002 and 1003 until this application is heard and determined.***
- 3. THAT this honourable Court be pleased to issue an order of temporary injunction restraining the defendants by themselves, their agents, relatives, employees and/or anybody else whomsoever acting on their behalf from entering, remaining, on, disposing of, cultivating, building, fencing and/or in any other way howsoever interfering with the plaintiff's user and enjoyment of her part of land parcel No. NYAKI/NKABUNE/128 OR ITS SUB-DIVISION L.R. NO. NYAKI/NKABUNE/1000, 1001, 1002 and 1003 until this suit is heard and determined.***
- 4. THAT this Honourable Court be pleased to issue an order of inhibition restraining any dealings whatsoever in Land reference No. NYAKI/NKABUNE/128 AND ITS SUBDIVISION ( i.e. Land reference Nos. NYAKI/NKABUNE/1000, 1001, 1002 and 1003) until this suit is heard and determined.***
- 5. THAT the costs of this application be provided for.***

The application has, inter alia, the following grounds:

- a. THAT the 1st defendant is brother to the plaintiff herein.***
- b. THAT the 1st defendant holds land parcel No. NYAKI/NKABUNE/128 in trust for inter-alia, the plaintiff.***

- c. ***THAT the said land was given to the mother of the plaintiff by one RAPHEL RALJI who transferred it to the 1st defendant to hold it in trust for the plaintiff's mother and her children.***
- d. ***THAT the plaintiff has been developing and cultivating part of the said land since the year 1983 and she has developed the same extensively by, inter alia, planting trees, bananas and cultivating seasonal crops e. g. maize and beans.***
- e. ***THAT the 1st defendant, in utter breach of the said trust, has colluded and conspired with the 2nd, 3rd and 4th defendants thereby selling the said land to them fraudulently and subdividing the same into semi units.***
- f. ***THAT the defendants are now threatening to eject the plaintiff from the said land and damage, take over and/or interfere with her developments thereon forcefully.***
- g. ***THAT anarchy is imminent as the defendants have ganged up against the plaintiff and there is a real likelihood that they will forcefully storm into the suit land and damage her said developments.***
- h. ***THAT the defendants are intending to dispose of the said parcels of land in order to pre-empt our attempts to get back the land***
- i. ***THAT should the aforesaid happen, the plaintiff stands to suffer irreparable loss and damage.***
- j. ***That it is in the interest of justice and fairness that his application be allowed.***

The plaintiff claims that the 1st defendant holds land parcel No. NYAKI/NKABUNE/128 in trust for, among others, the plaintiff. She claims that she has been developing and cultivating part of the suit land since the year 1983. She says that she has developed her part of the land extensively by, inter alia, planting trees, bananas and planting seasonal crops such as maize and beans. She claims that the 1st defendant is in utter breach of the said trust and has colluded and conspired with the 2nd, 3rd and 4th defendants and has subdivided and sold the suit land to them.

The 1st defendant admits that the plaintiff is his sister. He says that she has no house on the suit land but the gravelia and macadamia trees she uses were planted by him. He says that the suit land parcel No. L. R. NYAKI/NKABUNE/128 was a gift to him from his mother who was aware of the existence of the plaintiff but, did not give the land to her. He has said that all his other siblings were to share parcel No. L. R. NYAKI/NKABUNE/2798 which belonged to their father.

The 1st defendant says that he has already subdivided the land and sold it to the 2nd, 3rd, and 4th defendants. He submits that the co-defendants are in possession, and therefore, the application is brought in bad faith and is based on untruthful facts. He submits that an order of injunction will inconvenience the third parties who are purchasers for value and without notice. The 2nd, 3rd and 4th defendants have said that they are purchasers for value and are in occupation of the suit land. They have provided the apposite sale agreements between themselves and the 1st defendant. They say that they are purchasers for value and without notice and urge the court not to issue injunctive orders against them.

I have carefully considered the parties' averments and their submissions. I need not reinvent the wheel. The Court of Appeal has given guidance to courts when dealing with Interlocutory Injunctions. In the case of **MBUTHIA VERSUS JIMBA CREDIT CORPORATON AND ANOTHER [1988] KLR I**, the court opined as follows:

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

Some of the issues canvassed by the parties can only be considered during the hearing of the suit. I do note that the 2nd, 3rd and 4th defendants are in occupation of the suit land. Having weighed the relevant weight of the parties propositions, I find that the plaintiff does not merit the grant of injunctive orders against the defendants. I opine that should the plaintiff eventually win her suit, damages will be a sufficient remedy. I also find that the order of inhibition is unmerited.

In the circumstances, this application is dismissed.

Costs shall be in the cause.

It is so ordered.

**Delivered in Open Court at Meru this 14th day of January, 2015 in the presence of:**

Cc. Daniel/Lilian

Miss Gituma for Plaintiff/Applicant

Kiambi h/b Gikunda Anampiu for Defendant/respondent

**P. M. NJOROGE**

**JUDGE**