



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MACHAKOS

HCCC.NO.118 OF 2009

JOSEPHINE MUENI KILUTA PLAINTIFF/RESPONDENT

VERSUS

FLORENCE NGINA KIMEU DEFENDANT/APPLICANT

RULING

1. The Defendant/Applicant **Motion** dated **26.9.2011** is seeking injunctive relief against the Plaintiff/Respondent over **Ndalani/Ndalani/Block 1/541** pending hearing and determination of the suit. The Applicant is also seeking an order for leave to amend Defence and also add counterclaim in terms of the attached draft.
2. The Notice of Motion is supported by grounds on the Motion and also by affidavit of Florence Ngina Kimeu attached. The Application is based on the provisions of Order 40 Rule 1, Order 51 Rule 1, 3 and Section 1A, 1B and Section 3A Civil Procedure Act. The application is opposed by the Respondent/Plaintiff vide Replying Affidavit sworn by Josephine Mueni Kiluta on 25.11.2011.
3. The Parties agreed to canvass the application by way of written submissions. The Applicant's submission is that she is the legal representative of her deceased husband who is the registered owner of the suit land. She states that she is not aware of prior sale of the suit land to the Plaintiff/Respondent. She states that her deceased husband's title is absolute in line with Section 28 of repealed Cap 300 and being first registration cannot be impugned under Section 143 (1) of repealed cap 300. She seeks to protect the suit land on behalf of beneficiaries of her deceased husband.
4. She claims that the Plaintiff/Respondent is already wasting the suit land and demolishing permanent structures on suit land. She further states that the Respondent/Plaintiff is putting up illegal permanent structures on suit land. In essence the Plaintiff is altering the condition of suit land. She argues that she has met the threshold conditions of grant of interim injunction as set out by the case of **GIELLA –VS- CASSMAN LTD 1923 EA 358**.
5. The Respondent's case is that Ronald Kiluta bought suit land prior to registration of **JOHNSTONE MWAKA LUMBI KITEMU** on 14.9.2014. The registered owner was charged in Cr.C.No.631/06 for fraudulently acquiring title deed of the suit land but he passed on before the case was concluded. The Chief Land Registrar wrote to Land Registrar Machakos requesting him to put restriction on suit land with an intention of concealing registration as it had been obtained irregularly. Ronald Kiluta bought suit land on 9.12.09.
6. The Plaintiff has been in actual and physical possession of the suit land. The permanent structures on suit land were bought with suit land as the suit land was developed. The Respondent argues that under Section 26 the title can be challenged even if it be first registration on the grounds of

fraud, illegality etc. The Plaintiff submits that the Dependant title was acquired illegally and fraudulently and thus registration is null and void.

7. The Plaintiff thus submits that the Applicant has not met the threshold of granting injunctions as set out in the case of **GIELLA –VS- CASSMAN BROWN LTD. Supra**. The Plaintiff relied on case of **BASIL CRITICOS –VS- KPLC LTD., Nairobi HCCC 591/06** where court held that:

“Applicant established beneficial ownership to the suit land although he did not have a certificate of title.”

The Plaintiff seeks the Notice of Motion to be dismissed.

8. The court has gone through the material before the court and found the issues emerging as follows:

1. Whether the Applicant has established the presence of conditions for grant of interim injunctions?
 2. Is Applicant entitled to orders sought?
 3. What is the order as to costs?
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9. The Applicant’s husband was and is still the registered owner of the suit land. However, the title was impugned via Criminal law process leading to the charge of Applicant husband after investigation of Plaintiff’s complaint. Unfortunately, the Applicant’s husband died before the matter was finalised. The lands office has restricted the land on complaint of the Plaintiff. The Plaintiff claims to have bought land and is in actual possession and occupation. He has annexed an agreement dated 9.12.1999 in which he bought land before it was transferred to Applicant’s husband’s name.
 10. The Applicant complaint is that the Plaintiff is preparing to construct suit land and he is wasting the same. The Plaintiff submits that it is in occupation and the land developed and was only doing renovations after tenants vacated. After evaluating the aforesaid rivaling submissions, the court finds that the circumstances of the case herein dictates that the status quo be maintained pending hearing and determination of the suit.
 11. The court thus makes the following order:
 1. Status quo be maintained until suit is heard and determined.
 2. Parties comply with Order 11 within 30 days to expedite hearing of the suit.

Dated and Delivered at Machakos this 13th day of March, 2015.

CHARLES KARIUKI

JUDGE