



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

E.L.C. 146 OF 2014

FORMERLY KERUGOYA J.R. 16 OF 2014

**ANAH GICUKU SAMUEL.....PLAINTIFF/
APPLICANT**

VERSUS

STEPHEN KARIUKI NJERU.....1st DEFENDANT/RESPONDENT

THE COMMISSIONER OF LANDS.....2nd DEFENDANT/RESPONDENT

DISTRICT LAND REGISTRAR, EMBU..... 3rd DEFENDANT/RESPONDENT

RULING

1. By her notice of motion dated 10th November, 2014 through her advocates, the applicant (Anah Gicuku Samuel) has sought the following orders from this court:

1. That the application be certified urgent.
2. That she be granted leave to file and serve witness statements.
3. That she be granted an injunction to stop the trial proceedings in the court of Principal Magistrate at Runynges in civil case number 32/2013 between Stephen Njeru Kariuki (as the plaintiff) v. Joel Munyi Nyaga (as the defendant, which suit is in relation to land parcel number Kagaari/Kanja/8702.
4. A temporary injunction to stop the 1st defendant (Stephen Kariuki Njiru) from transferring and developing the suit land pending the inter-parties hearing of this application.
5. A grant of a mandatory injunction to compel the 1st defendant to deliver to the second and 3rd defendants, the original title in respect of the suit land for cancellation.
6. That the parties be at liberty to apply.
7. An order that the respondents pay costs of this application in any event.

2. The application is based on the grounds set out in the notice of motion and supported by an affidavit.

3. According to the applicant's affidavit, she sold the suit land to the 1st defendant in respect of which they drew up a sale agreement which is annexed to the supporting affidavit. Furthermore, she states that the 1st defendant defaulted in paying the purchase price. It is her affidavit evidence that the default invalidated the sale agreement.

4. She acknowledges in paragraph 7 that they attended the Land Control Board which approved the transaction. Following the invalidation of the sale agreement, the applicant was shocked to learn that the 1st defendant was the registered owner of the suit land.

5. She has also stated that she never agreed to the 1st defendant being the registered owner of the suit land. According to her, the 1st defendant became the registered owner as a result of fraudulent and illegal activities which she says are rampant in the land registries. And it is for that reason that she urges the court to grant her the orders.

6. The application is opposed by the 1st defendant. According to the counsel for the 1st defendant, the applicant is not a party to the trial proceedings in the court of the Principal Magistrate at Runyenjes. The applicant is only a witness in that case which is between Stephen Kariuki Njieru (as the plaintiff) and Joel Munyi (as the defendant).

7. Furthermore, the applicant has testified in those proceedings as a defence witness number 2. As far as counsel for the respondent is concerned, the applicant should have applied to be joined as a party to the trial proceedings at Runyenjes court.

8. Counsel for the respondent has also submitted that the applicant has not made out a case for the grant of the orders sought. Finally, counsel for the respondent has submitted that the application should be dismissed with costs.

9. The law applicable in this case is to be found in Order 40 of the 2010 Civil Procedure Rules. The provisions of Order 40 have been judicially approved in the case of ***Giella v Cassman Brown & Co Ltd (1973) EA 358***

10. According to that case, an applicant for a temporary injunction must satisfy the following conditions:

i. ***That he has a prima facie case which has a probability of success.***

ii. ***That if the injunction sought is not granted the applicant might suffer irreparable damage which damage is unlikely to be compensated by way of damages.***

iii. ***If the two conditions raised above raise doubt in the mind of the court, the court is required to decide the application on a balance of convenience.***

11. I have considered the affidavit evidence and the submissions of both counsel in the light of the applicable law. I find that the applicant has not met the conditions for the grant of a temporary injunction. The reason is that she appears to have sold and transferred the suit land to the 1st defendant.

12. In her own affidavit, she deposed that they attended the Land Control Board which also appears to have given approval to the said transaction.

13. In the circumstances, she has failed to discharge the burden of showing what damage she stands to suffer if a temporary injunction is not granted.

14. Furthermore, she is a stranger to the trial proceedings which she urges this court to stop. She is at liberty to join these proceedings as a party and defend her interests. It also appears

that she was a witness and has actually given evidence in those trial proceedings as defence witness number 2.

15. In the light of the foregoing matters, I find that the applicant has failed to satisfy the conditions for the grant of the orders that she is seeking from this court.

16. In view of what I have found in the foregoing paragraphs, I hereby dismiss her application with costs to the 1st defendant.

17. Her application to be granted leave to file and serve witness statements is allowed.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **23nd**day of**APRIL.....2015**.

In the presence of Mr. Kamunda holding brief for Ms Fatuma for the defendant and Ms Rose Migwi holding brief for Mr. Gacharia for the plaintiff.

Court clerk Mr Muriithi

J.M. BWONWONGA

JUDGE