



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
ELC CASE NO. 13 OF 2015

MARGARET RINGA P.M. GITONGA.....1ST PLAINTIFF

LEMMY GITONGA MAINA.....2ND PLAINTIFF

VERSUS

JACINTA NJOKI WAHOGO.....1ST DEFENDANT

JAMES MUIRU WAHOGO.....2ND DEFENDANT

SOLOMON NJOROGE WAHOGO.....3RD DEFENDANT

DAVIT MUNGAI WAHOGO.....4TH DEFENDANT

EDWARD GITAHI MATHENGE.....5TH DEFENDANT

DANIEL NGUGI KINUTHIA.....6TH DEFENDANT

RULING

This is in respect to the plaintiffs/applicants' Notice of Motion dated 19th February 2015 and filed herein on the following day in which the plaintiffs/applicants seek the following orders:-

1. *Spent*
2. *Spent*
3. *That the Honourable Court do grant orders for the cancellation of title issued to EDWARD GITAHI MATHENGE and DANIEL NGUGI KINUTHIA (5th and 6th respondents) in respect of Land Registration Number THIKA MUNICIPALITY BLOCK/33/68 (RUNYUA).*
4. *That the Honourable Court do grant a temporary injunction restraining the respondents whether by themselves, their agents and/or servants from dealing, interfering, occupying, vandalizing, alienating or otherwise dealing with the suit premises being land registration number THIKA MUNICIPALITY BLOCK 33/68 (RUNYUA) pending the hearing of the application.*
5. *That the Honourable Court be pleased to grant a mandatory injunction compelling the respondents to surrender and/or hand over vacant possession of the suit premises known as land registration number THIKA MUNICIPALITY BLOCK/33/68 (RUNYUA) pending the hearing and determination of the*

application.

6. *That costs of this application be provided for.*

7. *That this Honourable Court be pleaded to make such further or other orders as it may deem just and expedient in the circumstances of the case.*

The application is based on the grounds appearing therein and supported by the affidavit of LEMMY GITONGA MAINA the 2nd plaintiff/applicant. It is also supported by the various annextures thereto.

From the record herein, the defendants/respondents have not filed any responses to the said application though served as directed by this Court on 11th March, 2015. The said application is therefore not opposed.

Before I proceed further, I notice that on 20th February 2015, the applicant was granted prayer No. 3 ex-parte by the Deputy Registrar and the matter fixed for inter-parte hearing on 4th March 2015. I do not think prayer No. 3 could be granted ex-parte as it is an order seeking the cancellation of a title. This Court will set aside that order suo-motto.

Having said so, it is clear from the annextures herein that prior to his death, the late JOHN KARIUKI GITONGA had entered into an agreement to purchase land parcel No. THIKA MUNICIPALITY BLOCK 33/68 (RUNYUA) from the 1st respondent at Ksh. 2,500,000/= and paid a substantial sum of the purchase price. However, the deceased JOHN KARIUKI GITONGA, whose Estate is being administered by the 2nd plaintiff/applicant and his mother, died before the transaction was finalized. It was later discovered by the plaintiff/applicant that the title deed issued to them in respect of the said property was fake and that the land had infact been transferred to the defendants/respondents. That necessitated this application.

I have considered the said application and the annextures thereto. These annextures include an agreement for the sale of the said land parcel No. THIKA MUNICIPALITY BLOCK 33/68 (RUNYUA) between the 1st defendant/respondent (as the vendor) and the late JOHN KARIUKI GITONGA (as the purchaser) at a consideration of Ksh. 2,500,000/= of which Ksh. 1,562,500/= was paid at the signing of the agreement and Ksh. 937,500/= was to be paid upon obtaining certificate of confirmation of grant. There is also annexed a copy of the alleged fake title deed issued to the plaintiffs/applicants (annexture **LG 7**). All these averments are not rebutted as the defendants/respondents did not file any reply to the application.

Having considered all the above, I am satisfied that the plaintiffs/applicants have, on the un-rebutted evidence before me, made out a prima facie case with a probability of success as set out in the case of ***GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A. 358.***

On the issue of adequacy of damages as compensation, it would appear from the certificate of confirmation of grant issued to the plaintiffs/applicants (annexture **LG 5**) that the said property THIKA MUNICIPALITY BLOCK 33/68 (RUNYUA) is listed as part of the Estate of the late JOHN KARIUKI GITONGA and in the circumstances, what the defendants/respondents did would amount to inter-meddling with the deceased's property which is illegal. That would therefore amount to a clear transgression of the law and I would associate myself with the words of **Waki J** (as he then was) that in such circumstances, no award of damages can atone for what amounts to a clear transgression of the law – see ***MOHAMED VS COMMISSIONER OF LAND & FOUR OTHERS K.L.R. (E & L) 1 at page 217.***

Ultimately therefore, having considered all the matters herein, I find that this is a proper case to grant the remedy of injunction as sought. I would only add that some of the remedies sought herein would require that the Attorney General be enjoined. The plaintiffs/applicants' application dated 19th February 2015 and filed herein on 20th February 2015 is allowed in the following terms:-

1. *This Court issues a temporary injunction restraining the defendants/respondents whether by themselves, their agents and/or servants from dealing, interfering, occupying, vandalizing,*

alienating or otherwise dealing with the suit premises being land registration number THIKA MUNICIPALITY BLOCK 33/68 (RUNYUA) pending the hearing and determination of this suit.

2. *Costs in the cause.*

B.N. OLAO

JUDGE

27TH NOVEMBER, 2015

27/11/2015

Before

B.N. Olao – Judge

Mwangi – CC

Defendants – absent

Mr. Gitonga for Mr. Opondo for Plaintiffs – present

COURT: Ruling dated, delivered and signed this 27th day of November, 2015 in open Court.

Mr. Gitonga for Mr. Opondo for Plaintiffs present.