



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**ELC CASE NO. 777 OF 2013**

JANE GITIRI NJUE ..... 1<sup>ST</sup> PLAINTIFF

DOROTHY WARIMBA KARIUKI ..... 2<sup>ND</sup> PLAINTIFF

VERSUS

PETER MBOGO .....1<sup>ST</sup> DEFENDANT

NJURURI ANGELO NYAGA ..... 2<sup>ND</sup> DEFENDANT

**RULING**

On 24<sup>th</sup> October 2013, I granted prayers 1 and 2 of the plaintiffs/applicants Notice of Motion dated the same day seeking injunctive relief restraining the defendants/respondents from entering, evicting, selling, transferring or in any way interfering with land parcel No. NGANDORI/KIRIARI/4329 pending the hearing of the application inter-parte which was set for 6<sup>th</sup> November 2013.

The said orders were issued after the Court considered the supporting affidavit of the 2<sup>nd</sup> plaintiff/applicant's affidavit in which she deponed, inter alia, that the two plaintiffs/applicants are wives of the 1<sup>st</sup> defendant/respondent (now deceased) and that they have lived on the said land for over forty (40) years together with their children and the same is their sole source of livelihood yet in April 2013 they discovered that their late husband had sold the land to the 2<sup>nd</sup> defendant/respondent without involving them.

The 2<sup>nd</sup> defendant/respondent has now filed a replying affidavit to the plaintiff/applicant's Notice of Motion in which he depones, inter alia, that the plaintiffs/applicants have not demonstrated that they are wives of the 1<sup>st</sup> defendant/respondent and therefore have no locus to pursue this matter. Further, the 2<sup>nd</sup> defendant/respondent adds that he bought the property for value and nobody is residing there including the plaintiffs/applicants. He has annexed to his replying affidavit photographs showing that the land infact has tea bushes.

On his part, the 2<sup>nd</sup> defendant/respondent also filed his own Notice of Motion seeking the discharge of the ex-parte orders of injunction and in the alternative an order restraining the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, their servants, children, family members or anybody claiming through them from interfering, trespassing, intruding or in any manner dealing with the said property.

When counsels appeared before me on 25<sup>th</sup> November 2013, it was agreed that the two applications be canvassed together by way of written submissions. I have considered the applications, the supporting

and replying affidavits as well as the submissions of counsels.

The issue of the plaintiffs/applicants locus has arisen. They claim to be the wives of the 1<sup>st</sup> defendant but have no grant of letters of Administration pendente lite (for the purposes of this litigation). The 2<sup>nd</sup> defendant/respondent has deponed that they are not bone fide wives of the 1<sup>st</sup> defendant who is now deceased. It is not clear when the 1<sup>st</sup> defendant died and if any grant of letters of Administration have been issued in respect to his Estate. In the circumstances, the Court can only conclude that no such grant has been issued. The plaintiffs/applicants have however come to Court not as representatives of their later husband but as co-owners of the property in question. Indeed they claim it is matrimonial property because in paragraph 12 of their plaint they have pleaded as follows:-

***“The plaintiffs contend that they have acquired an interest on the said land by virtue of their marriage and the development of the land for more than 40 years hence they are now co-owners.***

Given that pleading, their locus is not in doubt but the issue of their co-ownership will await the trial.

The 2<sup>nd</sup> defendant/respondent seeks the discharge of my earlier orders. I see no basis upon which to do so and that application is dismissed.

Both parties are seeking injunctive reliefs. There is a crop of tea on the land and since the 2<sup>nd</sup> defendant/respondent only purchased the land in August 2013, he cannot possibly be the owner of that crop. In any case, there is a letter attached to his own affidavit (annexture *NAN – 4*) which is a letter from the chief of the area showing that the plaintiffs/applicants are the ones who work on that crop. In the circumstances, the orders that commend themselves to make in this case are as follows:-

- 1. Neither of the parties to this suit shall sell, transfer or in any way interfere with the suit property until this case is heard and finally determined.***
- 2. The plaintiffs/applicants shall continue to work on the tea crop on the land***
- 3. Each party to bear their own costs.***

**B.N. OLAO**

**JUDGE**

**25<sup>TH</sup> FEBRUARY, 2014**

25/2/2014

Coram

B.N. Olao – Judge

CC – Mwangi

Mr. Mogusu for Applicant – present

Respondent – absent

COURT: Ruling delivered this 25<sup>th</sup> day of February 2014 in open Court.

Mr. Mogusu for plaintiff/applicant present

Mr. Mungai for defendant/respondent absent.

**B.N. OLAO**

**JUDGE**

**25<sup>TH</sup> FEBRUARY, 2014**