



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 297 OF 2010**

PHILOMENA MURUGI NGUGI.....PLAINTIFF/APPLICANT

**VERSUS**

JANE NJERI KAMAU.....DEFENDANT/RESPONDENT

**RULING**

On 9/11/2010 this court granted an *ex parte* injunction against the Defendant restraining her from entering, transferring, charging, wasting or in any other manner howsoever interfering with Parcel No. Naivasha/Mwichiringiri Block 1/2127.

2. In an application dated 12.05.2011 the Defendant sought an order to discharge that injunctive order on the grounds inter alia that summons was never served upon her, and that the matter has never been heard inter partes, and that the Defendant has been condemned unheard. As the first application for injunction was never heard inter partes, and the orders were never extended, the injunctive orders expired by effluxion of time. *Ex parte* orders are valid for only fourteen days. That is the effect of Order 40 rule 4(2), and rule 6 of the Civil Procedure Rules 2010.

3. Notwithstanding the expiration of the injunctive orders, the circumstances in this application, compel this court to consider that matter further. The Defendant has in her Replying Affidavit sworn on 20th February 2013 deponed that she is the registered owner of the suit property having first bought it from one Esther Wangari Mwaura, for valuable consideration, and that she is therefore lawfully in occupation on the suit property and is entitled to such occupation. There is no Further Affidavit in response to the Defendant's said Affidavit. The Plaintiff has however in his Advocates Submissions dated 29th March, 2012, explained in some detail the circumstances under which the property came to be registered in the Defendant's case, and concludes that the seller to the Defendant had no legal title to transfer the property to the Defendant herein.

4. In addition there are cross-suits in this matter, being this suit, as well as Nakuru HCCC No. 158 of 2010 in which the Defendant herein has sued Esther Wangare Mwaura, the Seller of the suit land to the Plaintiff herein. The matter is further complicated by the decision in Nakuru High Court Succession Cause No. 56 of 1995.

5. The principles for grant temporary injunctions in this country are those stated in the case of **GIELLA VS. CASSMAN BROWN & CO. LTD [1973] E.A. 358** -

(1) that the Plaintiff has established a prima facie case with a probability of success,

(2) that an injunction will not ordinarily be granted where the Plaintiff can be adequately compensated in damages, and

(3) where the court is in doubt the matter be determined on the balance of convenience.

6. These principles were however questioned in the decision of the English House Lords in the case of **AMERICAN CYANAMID VS. ETHICON LTD [1975] A.C. 396** where the court held inter alia that -

(1) the grant of interlocutory injunctions for infringements of patents was governed by the same principles as those in other actions,

(2) there was no rule of law that the court was precluded from considering whether, on a balance of convenience an interlocutory injunction should be granted unless the plaintiff succeeded in establishing a prima facie case or a probability that he would be successful at the trial of the action,

(3) all that was required was that the court should be satisfied that the claim was not frivolous or vexatious, that is, that there was a serious question to be tried.

7. The Applicant herein has in my view raised a serious question of law whether the Defendant obtained a good title to the suit land. That is a matter for inquiry by the trial Judge. There is also a multiplicity of suits on the same suit land. Counsel on either side need to consider consolidation of these suits.

8. In the premises, I dismiss the Defendant's application dated 12th May 2011, and reinstate the orders of injunction first granted on 9th November 2010.

9. I also direct this suit and Nakuru HCCC No. 158 of 2010, be consolidated and heard together in the interest of expeditious disposal of suits.

10. Costs herein shall be in the cause.

11. There shall be orders accordingly.

**Dated, signed and delivered at Nakuru this 28<sup>th</sup> day of March, 2014**

**M. J. ANYARA EMUKULE**

**JUDGE**