



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

ENVIRONMENT & LAND COURT

LAND CASE NO. 93 OF 2013

MARY CHERONO CHEBABUN PLAINTIFF

VERSUS

**1. WILSON RONO
2. JOSEPH RONO DEFENDANTS**

R U L I N G

1. The applicant Mary Cheronno Chebabun is wife of the second respondent Joseph Rono. The first respondent Wilson Rono is a brother of the second respondent.
2. The applicant filed a notice of motion dated 10/7/2013 in which she seeks an order of injunction restraining the Defendant/Respondent from interfering with her unsurveyed Plot at Shikhendu measuring 55 x 55 feet (suit land).
3. The applicant contends that she bought the suit land from her father on 20/1/2011. She put up some temporary structures on the suit land and leased them out to tenants.
4. On 4/7/2013, the respondents herein invaded the suit land and started demolishing the structures and accumulating building materials on the suit land. The applicant annexed photographs which show a partly demolished structure and accumulated building stones. She therefore contends that unless the respondents are restrained by way of injunction, she will end up losing her property.
5. The respondents have opposed the application based on a replying affidavit sworn by the second respondent with authority of the first respondent.
6. The second respondent contends that the suit property belongs to him and that he bought the same from his father-in-law. He further contends that he has been having marital problems with his wife who has filed a case at Kitale Children's Court seeking custody of their children.
7. The second respondent further contends that the applicant moved out of the matrimonial house in the year 2011 with the sale agreement between and the father-in-law and that the sale agreement which the applicant has annexed to her application was purposely prepared for this suit in which the applicant seeks to embarrass him.
8. The second respondent contends that he sold the suit property to the first respondent in order to raise school fees for their children.
9. I have carefully considered the applicant's application as well as the opposition to the same by the applicant. I have now to decide on whether to grant the injunction sought or not.
10. The principles for grant of temporary injunction are now well settled. Firstly an applicant has to demonstrate that he has a prima facie case with probability of success. Secondly the court has to consider whether damages will be an adequate remedy. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.
11. In the present case, both the applicant and the second respondent contend that they each bought

- the suit land from father and father in- law respectively. The second respondent contends that the applicant is the one who went away with the sale agreement between him and his father-in-law.
- 12.The second applicant has annexed documents which shows that he is the one who has been pursuing the necessary contents and paying for survey of the land. The applicant contends that all these are forgeries. The second respondent on his part contends that the agreement annexed to the applicant's application was purposely prepared for this case.
 - 13.There is no doubt that the applicant and the second respondent have a strained marriage. The two are not staying together. The applicant has filed a case in the Children's court seeking custody of the children of the marriage. In the face of the rival contentions by the applicant and the second defendant/respondent, I cannot make a finding that the applicant has made out a prima facie case with probability of success.
 - 14.The suit land was there for the benefit of both the applicant and the second defendant who are still married. I will therefore not hold that damages will be an adequate remedy. This application will therefore be decided on a balance of convenience.
 - 15.The second respondent has admitted that he has sold the suit land to the first respondent. The first respondent is his brother. The second respondent is bringing in his brother in a matter touching on the family of both the applicant and the second defendant. This is not acceptable. The balance of convenience tilts in favour of grant of injunction. I therefore grant an injunction restraining the respondents from interfering with the suit property until hearing and determination of this suit. As the applicant and the 2nd respondent are married couples, I will not make any order as costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 25th day of March, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Bororio for Defendant/Respondent and Mr Kiarie for Mr Okile for Plaintiff/Applicant. Court Clerk Kassachoon.

E. OBAGA,

JUDGE

25/03/2014