



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC CIVIL SUIT NO 245 OF 2008

LEAH WANJIKU NJOROGE (Suing as Legal Representative Daniel Njoroge Ringiria)
.....**1ST PLAINTIFF**

BERNARD NDUNGU GITAU (Suing as Legal Representative Stephen Gitau Ringiria).....
.....**2ND PLAINTIFF**

VERSUS

PAUL NJAU

NJENGA.....**1ST**
T DEFENDANT

HANNAH; WANJIKU NJENGA (Being sued as the administrators of the Estate of the Late Peter Njenga Ringiria)..... **2ND DEFENDANT**

RULING

This application is premised on the grounds stated on the face of the application and the supporting Affidavit of Leah Wanjiru Njoroge who deposed her affidavit on 14th January 2014. She averred that she was the wife and administrator of the estate of the Late Daniel Njoroge Ringiria who was a brother to the late Peter Njenga Ringiria. She further stated that she had lived on the suit property since 1960 and the demarcation was done by elders in 1978 but separate titles were never issued and the eldest brother the Late Peter Njenga Ringiria held the land in trust for them. She stated that she was aware that the administrators to the Estate of the late Peter Njenga Ringiria were in the process of transferring the suit to 3rd parties and she has been summoned to attend a land board meeting on 15th January 2014 at the District Office in Dagoretti where the defendants have applied for consent to transfer the parcel of land to a third party. She also averred that when they filed the initial application dated 16th October 2012 they did not have a copy of the sale agreement despite applying due diligence to get a copy of the same and came across the sale agreement on 3rd January 2014 after being informed by the Dagoretti District Officer of the land consent application. She averred that if an urgent temporary order is not granted the defendants will suffer as the parcel to the 3rd parties will defeat their claim.

Parties filed their written submissions in which they recapped the contents of their affidavits. I have considered the pleadings and the submissions. The applicant is seeking a review of the orders on 7th June 2013 and a temporary injunction on LR No **Dagoretti/Ruthimuti/460** pending the hearing and determination of the application and the suit.

“an application for review cannot be entertained if the Order sought to be reviewed has not been extracted.”

“Review is only available where there is an error of law apparent on the face of the record or there is a discovery of new and important matter of evidence which the applicant could not by exercise of due diligence have placed in his pleadings or before the Judge when he heard the earlier application”.

I now turn to the determination of the issue of whether or not this court can grant the prayer of temporary injunction as sought in the Notice of Motion dated **14th January 2014**.

In deciding whether or not to grant an injunction, courts have been guided by the consideration that unless the injunction is granted, the damage so occasioned is such that the applicant would not be adequately compensated by an award of damages. Secondly, the Applicant must show that his case has a probability of success. Thirdly, if the court is in doubt it will decide the application on the balance of probability. In ordinary situations, the principles governing the grant of a temporary injunction are well settled although each case must be considered upon its own peculiar facts. In the case of **American Cyanamid Co v Ethicon Ltd [1975] AC 396, Lord Diplock** laid down guidelines for the grant of temporary injunctions. These principles are that;

2. *The Applicant would suffer irreparable injury which damages would not be capable of atoning if the temporary injunction is denied and the Status Quo not maintained; and*
3. Having outlined the said principles I will now decide on the issues in this case. This is a dispute emanating from a succession cause **No 1500 of 1995** which has already been determined and a certificate of confirmation of grant was issued on 8th July 2010. The applicants herein claim to be the owners of suit property by virtue of the fact that the deceased Peter Njenga held the same in trust for them. I have had a look at the plaint filed on **22nd May 2008** seeking a declaration that parcel number **Dagoretti/Ruthimitu/460** is ancestral land. An order directing the defendants herein to include the plaintiffs as beneficiaries in respect of parcel of **LR No Dagoretti/Rithimutu/460** registered in the name of Peter Njenga Ringiria and consequently the same be divided into three (3) equal shares and the families of **Peter Njenga, Daniel Njoroge Ringiria and Stephen Gitau Ringiria** or their respective legal representatives be issued with a search share each. They have however not declared that there was a succession matter pending in court in which the subject matter was among of the assets in the succession case.

“I thus reject the contention that the land was held in trust by the deceased (Peter Njenga Ringiria). I declare that the said land was a property owned by the deceased who left two wives and his children”

It should be noted that this court is a court of concurrent jurisdiction with the court that confirmed the grant to Paul Njau Njenga and Hannah Wanjiku Njenga the Respondents herein otherwise known as the High Court, Family division. If the applicants are aggrieved by the decision made in Succession Cause **No 1500 of 1995** they have the right to appeal and not file another suit in the same High Court as they have done in this present suit.

It is so ordered.

L.GACHERU

In the Presence of:-

Mr. Gatumuta for the Respondent.

Application is dismissed.

JUDGE

<p justify;"=""> **23/5/2014**