



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

**ELC CASE NO. 684 OF 2013**

**MILKA WANGARI MUYA .....1<sup>ST</sup> PLAINTIFF**

**FELISTAS WAMAITHA THUO.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**FAITH WANJIKU MUYA.....DEFENDANT**

**RULING.**

The Plaintiffs/Applicants herein **Milka Wangari Muya** and **Felistas Wamaitha Thuo** filed this Notice of Motion dated 11<sup>th</sup> June, 2013 and sought for various Orders. These Orders are:-

1. *Spent*
2. *Spent*
3. *That pending the hearing and determination of the suit herein, this Honourable Court be pleased to grant an Order of Temporary Injunction directed at the Defendant herein **Faith Wanjiku Muya**, her agents, servants, and/or employees restraining them from alienating, selling, transferring, charging, leasing or in any other manner interfering with the Plaintiffs quiet enjoyment of the parcels of land known as and more particularly described as **LR Ruiru/Mugutha Block 1/T 3456 and 3835.***
4. *That the officer commanding **Ruiru Police Station** be served with a copy of any of the Orders made herein to ensure compliance and observance of the law and Order.*
5. *That costs be provided for.*

The application was supported by the grounds stated on the face of the application and also the supporting affidavit of **Felistas Wamaitha Thuo**. Among the grounds in support of the application are:-

That the Plaintiffs owns the parcels of land known as **LR Ruiru/Mugutha Block 1/T 3456 and T 3835**; that the Defendant has colluded with the officials of **Nyakinyua Investment Limited Company** who have given her a letter claiming she owns the two parcel of land and she has obtained a second set of the titles to the two parcel of land and on the **LR Ruiru/ Mugutha Block 1/T 3456** is where the family of the second Plaintiff resides ; Further that the Plaintiffs still have the original title deeds in their possession pertaining to the two parcels of land; That the Defendant has purported to seek to transfer the two plots to unsuspecting purchasers which acts are fraudulent ; moreover, the 2<sup>nd</sup> Plaintiff lives in a residential house on the parcel of land, **LR Ruiru/Mugutha/Block 1/T 3456 and T 3835** and unless an Order for

Temporary Injunction is granted, there is danger and apprehension of her suffering irreparable loss and damage.

In her Supporting Affidavit, the 2<sup>nd</sup> Plaintiff, **Felistas Wamaita Thuo** who deponed the Affidavit on her behalf and on behalf of the 1<sup>st</sup> Plaintiff averred that on 8<sup>th</sup> June, 2013, some people who were armed with guns went to her house in a private vehicle and told her they had purchased her parcels of land from the Defendant but they had no title documents. She further averred that she now lives in fear as her house is on the disputed parcels of land and she has been threatened with eviction and demolition of her residential house and she has nowhere to go. Therefore, she is seeking the protection of this Honourable Court by way of injunctive relief as the plaintiffs have all the times been the registered owners of the two parcels of land.

The application is contested. **Faith Wanjiku Muya**, the Respondent deponed a Replying Affidavit. She deposed that she is the registered owner of the two parcels of Land, **LR Ruiru/Mugutha/Block 1/T 3456** and **T 3835** as evidenced by **FWM 1 (a) and (b)**. She further deposed that she purchased **LR No. Ruiru/Mugutha Block 1/T 3456** from one **Racheal Nyakanini** by purchasing her share in **Nyakinyua Investment Co Ltd**, on 14<sup>th</sup> June 2000, as evidence by annexures **FWM2**. She averred that she purchased **LR No. Block 1/Ruiru/Mugutha/T 3835** from **Teresia Njeri Kiarie**, by purchasing her share from **Nyakinyua Investment Ltd** on 14<sup>th</sup> June, 2004 as per **annexture FWM3**. It was her contention that she was issued with the Share Certificates of the two parcels of land on 14<sup>th</sup> June, 2000 and 21<sup>ST</sup> April 2014 as per annexures **FWM 5 (a) and (b)** and she constructed a house on the said land. The deponent further averred that she got married to **Joseph Muya Kieha** but they later separated and he married **Milka Wangare Muya**, the 2<sup>nd</sup> Respondent herein. It was her further contention that there was a land dispute between her and **Joseph Muya Kieha**, who claimed the said land to be hers and wanted to transfer it to himself and **Milka Wangare Muya**. The dispute was referred to Land Dispute Tribunal and the Land Dispute Tribunal ruled that the land belongs to the Respondent as evidenced by **annextures FWM6**. Further, that the said ruling was adopted by the Chief Magistrates Court Thika and the Land Registrar Thika was ordered to register the Land parcels in her name as per annexures **FWM7**. It was her further contention that the applicants fraudulently obtained title deeds to these parcels of land in their names. The Respondent also averred that the applicants' application has no merit as the suit is duplication of the JR application **No. 113 of 2011**. She urged the court to dismiss the applicants' application with costs.

The parties herein consented to canvass this application by way of written submissions. I have now carefully considered the instant Notice of Motion, the Written Submissions and the relevant laws and I make the following findings.

The applicants herein have sought for injunctive orders. These are equitable remedies which are granted at the discretion of the court. However, such discretion must be exercised judicially. See the case of **Hasmukh Khetsi Shah Vs Tinga Tranders Ltd, Civil Appeal No. 326 of 2002 (2002) KLR 4628 where the court held that:**

***“It must be stated at the outset that the granting of the interim Injunction is an exercise of judicial discretion”.***

Further, an order of injunction is an equitable relief issued to prevent the ends of justice from being defeated (See the case of **Reef Building Systems Ltd Vs Nairobi City Council, Nairobi High Court, Civil Case No.1357 of 2001**). Being an equitable remedy, the party seeking it must come to court with clean hands ( **See Jane Achieng Onyango Vs Giro Commercial Bank, Kisumu High Court, Civil case No. 339 of 1999.**

The applicants having sought for injunctive relief; they had a duty to demonstrate that they indeed deserve the Orders sought. The Principles for grant of injunctive relief are well laid down in several judicial pronouncements. See the case of **Kibutiri Vs Kenya Shell, Nairobi, High Court, Civil Case No. 3398/1980 ( 1981) LR 390** where the court held that:-

***“ The conditions for granting of a temporary injunction in East Africa are well known and these are; First an applicant must show prima facie case with a probability of success. Secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience” See Giella Vs Cassman Brown & Co. Ltd (1973) EA 358.***

Have the applicants herein established the above stated principles?.

The applicants herein alleged that they are the registered owners for the two parcels of land. However, the 1<sup>st</sup> applicant, **Milka Wangari Muya** allegedly sold her parcel of land, **Ruiru/Mugutha Block 1/T 3456** to the 2<sup>nd</sup> applicant **Felistas Wamaita Thuo** . It was alleged by the 2<sup>nd</sup> applicant that she has put up her residential house on the two plots. Applicants also attached documents showing the history of the two parcels of land.

It is not in doubt that the two parcels of land have two sets of title documents. The 1<sup>st</sup> title documents were issued in the year 2003. **Ruiru/Mugutha Block 1/T 3456** was registered to **Milka Wangari Muya** on 5<sup>th</sup> January, 2003 and **Ruiru/Mugutha /Block 1/T 3835** was registered to **Felistas Wamaita Thuo** on 12<sup>th</sup> January 2003. The said parcels of land were later registered in the name of **Faith Wanjiku Muya** on **21<sup>st</sup> May, 2012** after a Court Order.

It is evident that both the Plaintiffs and the Defendant are claiming ownership of these parcels of land. However, at this stage, the court is not required to determine the very issues which will be canvassed at the trial. This was the holding in the case of **Edwin Kamau Muniu Vs Barclays Bank of Kenya Ltd, Nairobi ( Milimani) High Court, Civil case No. 1118 of 2002,** where the Court held,

***“In an interlocutory application, the Court is not required to determine the very issues which will be canvassed at the trial with finality”.***

The Plaintiffs herein have attached documents showing how they acquired the two parcels in dispute. The Defendant has also attached her documents which also show how she acquired the two parcels of land. There is also a Court Order which emanated after the award of Land Dispute Tribunal in Ruiru was adopted as the Order of the Court on 13<sup>th</sup> February, 2012. From the above Court Order, the Defendant got registered as a proprietor of the two parcels of land. However, the plaintiffs have disputed that ownership. Those are issues that will need to be canvassed in a full trial by calling evidence and interrogating it through cross-examination.

As I stated earlier, there are two sets of title documents. The first ones were issued in the year 2003 which are held by the Plaintiffs/applicants. The second set were issued in the year 2012 and are held by the Defendant /Respondent. The 2<sup>nd</sup> Plaintiff has also alleged that she has put up her residential house and she lives with her family on the disputed parcels of land. The Respondent has not alleged that she lives on any of the parcel of land.

As it is evident that both parties have titles to these two parcels of land, the Court at this juncture cannot hold with certainty as who between the Plaintiffs and the Defendant hold a good title. The Plaintiffs have therefore not established that they have a prima-facie case with probability of success.

However, it is not disputed that 2<sup>nd</sup> Plaintiff lives on the two parcels of land with her family. There are allegations that some people confronted 2<sup>nd</sup> Plaintiff and threatened her that the said parcels of land had been sold to them by the Defendant. If that is the case, then the 2<sup>nd</sup> applicant stands to suffer. It is well established principle that the purpose of injunction is to maintain **Status Quo**. In this matter, **Status Quo** means that 2<sup>nd</sup> Plaintiff should continue living in the two parcels of land until such time the matter will be determined to establish who is the real owner of the two parcels of land.

Having considered the written submissions herein and the annexures by all the parties, the court finds that the balance of convenience tilts in favour of the applicants herein.

For the above reasons, the Court finds that the applicants' Notice of Motion dated 11<sup>th</sup> June, 2013 is merited. The same is allowed in terms of prayers No.3 and 4.

Costs in the cause.

The Plaintiffs are also to ensure that the matter is set down for hearing expeditiously so that the issues in dispute can be determined once and for all. The hearing of this matter to be set down within the next 12 months. Failure to do so, the Orders issued herein will lapse automatically.

Dated, signed and delivered this **26<sup>th</sup> day of September 2014**

**L. GACHERU**

**JUDGE**

26/9/2014

Before Gacheru Judge

Court Clerk : Kamau

In the Presence of:-

Mr Mwangi holding brief for P.K Njoroge for Plaintiffs/Applicant

Mr Anambo for the Defendant /Respondent

**L. GACHERU**

**JUDGE**

**26/9/2014**

**Court**

Ruling read in open Court in the presence of

Mr .Mwangi holding brief for P K Njoroge for Plaintiffs/Applicants and

Anambo for Defendants.

**L. GACHERU**

**JUDGE**

**26/9/2014**