



REPUBLIC OF KENYA

High Court at Meru

Environmental & Land Case 54 of 2012

JULIET CIONJOKA MUTEGLI.....1ST PLAINTIFF

JOAN WANJA MUTEGLI.....2ND PLAINTIFF

JOHN MWENDA MUTEGLI.....3RD PLAINTIFF

PETER NJAGI MUTEGLI.....4TH PLAINTIFF

VERSUS

HILDA KARIMI NJERU.....DEFENDANT

RULING

The application, dated 27th day of July, 2012 was filed by the plaintiff's seeking orders:

- 1.**THAT** this application be certified as urgent and the same be heard ex-parte in the 1st instance.
- 2.**THAT** pending the hearing of this application, this honourable Court do issue an order of temporary injunction restraining the defendant either by herself, her servant or/and agents from disposing of, charging, transferring or in any way interfering with L. R. NO.Mwimbi/Murugi/504.
- 3.**THAT** pending the hearing of this suit this Honourable Court do issue an order of temporary injunction restraining the defendant either by herself, her servants, or/and agents from disposing of charging, transferring or in any way interfering with L.R. No. Mwimbi Murugi/504.
- 4.**THIS** honourable court be pleased to make an order of inhibition to be registered against L. R. No. Mwimbi/Murugi/504.
- 5.**THAT** the cost of this application be provided for.

Interim orders were issued by the Hon. Justice J. A. Makau on 31st July, 2012.

Counsel for the plaintiffs submitted that he was relying on an affidavit and supplementary affidavit filed in court. He stated that the main reason for this application was that there were allegations that the defendant was in breach of trust with regard to the suit land which he claimed was family land. He claimed that the plaintiffs were occupying the suit land, had cultivated it and had property thereon. He, therefore prayed that the application herein be allowed.

Counsel for the defendant would rely on the replying documents and annexures she had filed in court. The defendant was the registered proprietor of the suit land and she was holding it in trust for the children of her late brother Timothy Riungu. She pointed out that the plaintiff had shown evidence that

the land originally belonged to her brother who had bought it. It was, therefore not family land. Counsel contended that the plaintiffs were simply taking advantage of the fact that the children of the late Timothy Riungu, the original owner of the suit land were living in the United States of America. She pointed out that the defendant had shown that the ancestral lands which the applicants could lay claim on were parcel Nos. Mwimbi/Murugu/468 and 422 which the applicants and another brother had already got.

She told the court that the applicants had not come to Court with clean hands as the defendant had given to Court evidence vide annexure "HKN4" of the replying affidavit that the applicants had attempted to sell the suit land knowing very well that they did not have title to it. Annexure 'HKN4' is the Sale Agreement.

The counsel for the defendants contended that the claim for injunction was made under Order 51 instead of under Order 40 and for that reason had no basis, was therefore hanging and should not be allowed.

The counsel also contended that the applicants had not given any single fact warranting the issuance of injunction contrary to the principles that the applicant must demonstrate a prima facie case, must show that consequential loss would not be compensatable by way of damages and that in any other circumstances, the balance of convenience would tilt in the applicant's favour.

Counsel for the applicant only contended that Section 19(2) of the Environment and Land Court Act exempted the Environment and Land Court from being bound by the Civil Procedure Act.

I have evaluated submissions of the parties. I will deal with the issue of whether the application should have been brought under Order 40 or Order 51. I must point out that counsel for the applicants is wrong in intimating that this Court is not bound by the Civil Procedure Act. I find as a fact that Legal Notice No.12 of 2012 did remove the word "not" from Section 19 of the Environment and Land Court Act. The Court is, therefore, bound by the Civil Procedure Act. I, however, do not find that the application, is not properly before this court. Its merits will be considered.

The classic authority in the area of injunction is *Giela V Cassman Brown & Co. Ltd* [1973] EA 358. The Court said:

"The conditions for the grant of an interlocutory injunction are now, I think well settled in East Africa. First, an applicant must show a 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 the application on the balance of convenience."

I find that the applicants have failed the three tests. Regarding the prayer for an order of inhibition, I find that the mere allegation that the defendant is in breach of trust does not warrant the issuance of an order of inhibition.

In the circumstances, the application dated 27th July, 2012 is dismissed. If an order of Inhibition had been registered in pursuance of the Interim Orders issued on 31st July, 2012, it is ordered that it be cancelled forthwith.

I award costs of this application to the defendant.

Orders accordingly.

DATED AND SIGNED AT MERU THIS 31st DAY OF January , 2013.

**P. M. NJORGE
JUDGE**

DELIVERED IN OPEN COURT IN PRESENCE OF

THIS 31ST DAY OF JANUARY,2013

**P. M. NJORGE
JUDGE**