



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Case 27 of 2012**

**DANIEL MAINA KARANJA(Suing as the Personal Representative of the Estate of JULIUS KARANJA NGANGA**

**(Deceased).....PLAINTIFF**

**VERSUS**

**NICERATA MUTHONI NJAGI.....DEFENDANT**

**RULING**

The plaintiff has filed a Notice of Motion dated 18th January 2012 under order 40 rule 1 & 2 of the Civil procedure Rules 2010, Section 3 A and 63 of the Civil Procedure Act and all other enabling provisions of the law. The plaintiff is seeking the following orders;

1. Spent
2. That a temporary injunction be issued to restrain the defendant whether by herself, her servants, employees and/or any other persons acting under her authority from entering, trespassing, constructing, selling, transferring, or whatsoever from interfering with ownership rights or in any other manner from dealing with Plot No. 3/397 Soweto Nairobi till hearing and determination of this application.
3. That a temporary injunction be issued to restrain the defendant whether by herself, her servants, employees and/or any other persons acting under her authority from entering, trespassing, constructing, selling, transferring, or whatsoever from interfering with ownership rights or in any other manner from dealing with Plot No. 3/397 Soweto Nairobi till hearing and determination of this suit.
4. That costs of this application be provided for.

The application is based on the following grounds;

1. That plot No. 3/397 Soweto Nairobi is lawfully owned by the Estate of the late Julius Karanja Nganga.
2. That the defendant without any colour of right has invaded the suit plot and erected permanent rooms purporting that the plot belongs to her.
3. That as the Legal Representative of the Estate, the applicants seek protection and preservation of the assets of the Estate of the Julius Karanja Nganga, Plot No. 3/397 Soweto Nairobi being one of them.

In the Supporting affidavit of Daniel Maina Karanja dated 18/1/12 he depones as follows in brief; that he is the son of the late Julius Karanja Nganga and the legal representative of his estate. That prior to his death his father owned plot No. 3/397 within Soweto Scheme in Nairobi as per allotment letter dated 20th September 1990. That sometimes in the month of September, 2011 he was informed by one Hadija Abdul Karim alias Hadija Juma that the suit plot was being developed. His late father had sold the plot to Hadija Abdul Karim but had not transferred the same to her. That on visiting the site he confirmed that the plot was being developed. That he and Hadija Karim decided to seek help from the Provincial Administration Hadija being the complainant having bought the plot from his late father. They did not get help from the provincial Administration except confirmation that his father is still the registered owner of the plot. That on 2nd November 2011, he filed civil suit No. 5248 in which he named one Moses Kinyua Njiru as the defendant who denied that he was behind the construction and was therefore unsuited and no orders were issued against him. He has since withdrawn the suit against Moses Kinyua Njiru and sued the defendant herein who has admitted she is constructing on the suit plot claiming the plot belongs to her. That her alleged allotment letter purported to be signed by the same signatories as his father's allotment letter was subjected to forensic documents examination and found not to have been signed by the same signatories as those of his allotment letter. That he got the defendant's copy of the alleged allotment from the District Commissioner's office Embakasi which had been used as an exhibit in Civil suit No. 1808 of 2011 in the Chief Magistrate's Court at Nairobi in which one Gathimba W. Mwangi sued Moses Kinyua Njiru in respect of Plot no. 398 Soweto Kayole estate whereupon his advocate obtained a Replying Affidavit sworn by the said Moses Kinyua Njiru in which he deponed that he does not own plot No. 398 but his wife Nicerata Muthoni Njagi the defendant herein owns plot no. 397 Soweto Kayole (the suit plot). That further on perusal of the purported letter of allotment to the defendant it bears identity card number 24040631 the number confirmed by the Registrar of persons as belonging to the defendant and issued on 26th March 2010 and shows the date of birth of the defendant as 1983 and therefore the defendant could not have had an identity card on the 20th September, 1990 when she is purported to have obtained the allotment letter which further confirms that the alleged allotment letter to the defendant cannot be genuine. That from the document examiner's report and the identification report from the National Registration Bureau it is quite clear that the defendant does not have a genuine claim to the suit plot and is therefore a trespasser and the Honorable Court should restrain her from further construction pending the hearing and determination of this suit.

In a replying affidavit of Nicerata Muthoni Njagi 2/2/2012 she depones as follows ;that applicant has not established ownership of the subject property beyond reproach as the purported letter of allocation annexed to the applicants affidavit marked as DMK2 is undated. It does not indicate the year it is alleged to have been issued to the deceased. Secondly the signature on it does not resemble that which is on the other peoples letters of allocation, neither does it indicate the official who has signed it and the capacity in which he does so, as it is the practice. That she is the legal/lawful and bona fide owner of the suit plot, No.3/397 situated at Kayole, Soweto. That she has been rightfully developing the said plot and this is a fact that has been confirmed by the village elders, area Sub-chief and District Officer. That the applicant instituted Milimani CMCC No. 5248 of 2011 against her husband Moses Kinyua Njiru similar to the one before this court and his suit was dismissed with costs on 28th November 2011. That it is clear from the said lower Court's (case CMCC No. 5248 of 2011) ruling and pleadings that the plaintiffs claim has gaps and which have not been addressed even before this Court. These include the facts that, the letter of allotment allegedly issued to the deceased does not have a full date and the year it was issued is not indicated. That the Initial complainants to the area chief were one Adija Abdallah and Hadija Abdul Karim and their interests in the plot have not been explained. That after the applicant lost in the lower Court he hired goons and they went to the plot and demolished part of it. That she reported the incident to Kayole Police Station who summoned the plaintiff and investigations are still going on. That the applicant took law into his hands and therefore has come to this court with unclean hands and he does not merit equity. That the District Officer, one J. K Ndathi, who was the chairman, Embakasi sub-location and who issued the letter of allotment to her and to the others has not denied that he did so (issued it) to her and that the signature on her letter of allotment is not his. That the attached forensic document examiners report therefore has no probative value.

Parties filed written submissions. The plaintiff counsel in his submissions reiterates what the applicant has deponed. Counsel claims that the respondent is a trespasser and should be restrained from carrying any

further development or claiming ownership of the said plot. That the defendants claims are based on falsehood and concealment of material facts and that this Court should grant the orders sought by the plaintiff as the balance of convenience tilts in his favor and that the plaintiff stands to lose immensely if the defendant were to continue with the construction on the suit plot. Counsel relied on the case of **Geilla vs. Cassman Brown 1973 E. A.**

The defendant submitted that the plaintiff has failed to establish his case as the principles set out in the case of **Geilla vs. Cassman Brown** that the value of the land can be established and he can be easily compensated by way of damages. That the plaintiff has not established conclusively that the suit plot no. 3/397 belongs to his deceased father as the letter of allotment is undated and the officer signing it is not indicated, plus its distinct from the other letters attached. That her ownership has been confirmed by the village elders, area Sub-chief and the District Officer who are the best persons to do so since the plot is not registered with the Ministry of land. That the applicant has no locus standi to claim the plot as he claims that his late father sold it to a third party who is not a party in this suit. That the plaintiff has not come to Court with unclean hands as he lost in the previous suit. The respondent has urged this Court to dismiss this suit.

I have considered the facts as deponed by the parties, the submissions made and the principles of granting an injunction as set out in the case of **Geilla vs. Cassman Brown**. The plaintiff claims that the plot belongs to his late father and that his father was allotted the plot on the 20<sup>th</sup> of September 1990, the defendant on the other hand also claims that the plot is hers and that she was allotted the said plot on the 20<sup>th</sup> of September 1990 and that she is in possession. No titles have been issued yet what the owners have are allotment letters. There is no dispute that the respondent has begun construction in the said plot. At this interlocutory stage the applicant has to demonstrate that he has a prima facie case with a probability of success. The applicant has stated that by the time his father died the plot had not been transferred to Hadija Karim the person who bought it. The respondent argues that the applicant has no locus standi. The applicant has shown that he had a limited grant of letters of administration ad litem in respect of his late father's estate. This gives him the locus standi to file this suit. The applicant has attached the allotment letter dated 20<sup>th</sup> September , the respondent too has attached an allotment letter dated 20<sup>th</sup> September 1990, what I find interesting is what the applicant has pointed out that the respondent was 7 years old at the time the said letter was issued. The applicant has attached a copy of identification report on the respondent's identity card which shows that her date of birth is 1983. The respondent did not respond to this fact. I am therefore persuaded that the applicant has a prima facie case with a probability of success. Indeed the value of the plot can be calculated and the applicant can be compensated but the balance of convenience in this case tilts in favor of the applicant and the ownership of the said plot needs to be determined.

I find that it is in order to grant an order of injunction. A temporary injunction shall issue to restrain the defendant whether by herself , her servants, employees and/ or any other persons acting under her authority from entering, trespassing, constructing, selling, transferring or whatsoever from interfering with ownership rights or in any other manner from dealing with plot no. 3/397 Soweto Nairobi till the hearing and determination of this suit. Cost of the application shall be in the cause.

Orders accordingly.

**R. OUGO**

**JUDGE**

Dated ,signed and delivered this 25th February 2013.

In the presence of:-

.....**PLAINTIFF/APPLICANT**

.....**DEFENDANT/ RESPONDENT**

.....**COURT CLERK**