



**REPUBLIC OF KENYA**

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

**ENVIRONMENT & LAND CASE NO. 58 OF 2013**

**RUTH WANJIKU KIMANI.....PLAINTIFF**

**VERSUS**

**SAMUEL AMENDI..... DEFENDANT**

**RULING**

The Applicant Ruth Wanjiku Kimani brought a Notice of Motion seeking injunctive orders against the Respondent, his servants and or agents from trespassing upon, construction on or in any way interfering with a plot measuring 50 X 100 out of Plot No. 46 Matunda Market Uasin Gishu County. The Applicant contends she bought the plot in issue from one Majitu Webbo Wepukhulu on 17/08/2012. The Applicant contends that the Respondent has without justifiable cause trespassed onto the plot and has refused to move out despite efforts to have him move out.

The application was served upon the Respondent who appeared in Court and orally informed the Court that he was not the owner of the land in issue but he was only a caretaker. He said that the proprietor had died and that her sister who was in possession of the documents to the land was in Denmark. The application was adjourned to enable him obtain the necessary documents but during the hearing, he did not turn up. The application proceeded in his absence. M/S Arunga for the Applicant argued that the Applicant who wanted to take possession of her plot had been prevented from doing so by the Respondent.

I have looked at the Sale Agreement which is annexed to the Applicant's application. The agreement refers to sale of Plot No. 46 which is 50 X 100. The Applicant in her affidavit states that she bought a plot measuring 50 X 100 out of Plot No. 46. The Sale Agreement does not state whether the said Majitu Webbo Wepukhulu is owner of the said plot. He only states that him and his family have agreed to sell Plot 46 (50 X 100) to the buyer. The agreement further states that the buyer is at liberty to deal with the plot as she wishes.

The principles for grant of a temporary injunction were well set out in the case of **Giella Vs Cassman Brown & Co Ltd**. One of the Principles is that an Applicant must demonstrate that he has a prima facie case with a probability of success. The Applicant is secondly to show that if the injunction is not granted, he will suffer loss which will not be compensable. Thirdly, if the Court is in doubt, it will decide the application on a balance of convenience.

In the present case, the Applicant is seeking an injunction on the basis of a Sale Agreement. It is not demonstrated whether the plot she bought belongs to the seller Majitu Webbo Wepukhulu. In the agreement, the plot being sold is Plot 46 (50 X 100). The Applicant contends that she bought a plot measuring 50 X 100 out of Plot 46. There is no indication as to how big Plot 46 is. The Respondent is already in possession of the suit land. It is not indicated when he came onto the plot. The Applicant merely says that the Respondent trespassed onto the plot and has refused to move out. It cannot be said that the Applicant has demonstrated that she has a prima facie case with a probability of success. It may well be possible that the seller took advantage of the death of the owner to try to defraud her of his land. The Applicant should have at least tried to demonstrate that Plot No. 46 belonged to the alleged seller. A Sale Agreement without more is not enough. If the Applicant finally proves a case, she has not demonstrated that the loss she will suffer cannot be compensable in monetary terms. She is not in possession of the land. She has not made any developments on it. What she is trying to ask for amounts to granting a mandatory injunction. This cannot be possible. I find that she has not made out a case for

grant of an injunction. I dismiss her application with no order as to costs.

It is so ordered.

**Dated, signed and delivered in Open Court on this 19th day of August, 2013.**

**E. OBAGA**

**JUDGE**

In the presence of Mr. Ndarwa for M/S Arunga for Applicant.

Court Clerk: Lobolia.

**E. OBAGA**

**JUDGE**

**19/08/2013A**