



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI

ELC SUIT NO. 934 OF 2012

PETER NG'ANG'A MBUGUA.....1ST PLAINTIFF

WALTER MBURU MBUGUA.....2ND PLAINTIFF

ALICE NGENDO MBUGUA.....3RD PLAINTIFF

BEATRICE WAITHERA MBUGUA.....4TH PLAINTIFF

LUCY MUMBI KURIA.....5TH PLAINTIFF

VERSUS

SAMWEL MBUGUA NG'ANG'A..... DEFENDANT

RULING

The Plaintiffs are the children of the Defendant, and have filed a Notice of Motion dated 3rd December 2012 brought under Order 40 Rules 1 (a), (b) and 4(2) of the Civil Procedure Rules, and sections 63 (c) and 3A of the Civil Procedure Act seeking orders that an interim injunction do issue restraining the Defendant from transferring, disposing off, leasing or otherwise howsoever from interfering with land reference numbers KIAMBU/LARI/1918, KIAMBU/LARI/1934, KIAMBU/LARI/704 and KIAMBU/LARI/708 (hereinafter referred to as the suit properties) in any manner adverse to the Plaintiffs' interests pending the hearing and determination of this suit.

The Plaintiffs claim that they are beneficiaries of the suit properties, and that the Plaintiff is registered only as a trustee of the said properties. They claim that the Defendant has withdrawn cautions that they had placed on the suit properties, and fear that he intends to dispose of the said properties. The Plaintiffs filed a supporting affidavit they all swore on 3rd December 2012, and a further affidavit sworn on 12th March 2013. They state that their mother one Zipporah Njeri Mbugua, who was a joint registered trustee of the suit properties with the Defendant died on 22nd July 2010. Further, that the Defendant thereafter entered into a civil marriage with one Beth Njoki and has disposed of the family estate without their consent.

The Plaintiffs further stated that they developed the suit properties housing units using funds from their joint savings that were in a consolidated family fund. They also stated that the Defendant had rejected

attempts to hold a family meeting as directed by the court, and had instead proceeded to file a Notice of Motion in Kiambu Chief Magistrate Misc. Application No 2 of 2013 and got orders to remove the cautions that they had placed on the suit properties. Further, that he also proceeded to transfer land reference number Kiambu/Lari/1918 to a third party. The Plaintiffs attached copies of the search certificates of the suit properties, the registered cautions, their mother's death certificate and of their objection to the subsequent civil marriage entered into by the Defendant.

The Defendant opposed the Plaintiff's motion in a replying affidavit he swore on 10th December 2012, and stated that he is the sole proprietor of the suit properties. Further, that he has developed the properties by putting up residential houses thereon and has settled on one of the properties, namely land reference number Kiambu/Lari/1934. He also stated that he had given each of the Plaintiffs separate land for which they had been issued title deeds, and he attached copies of the searches of the said titles. Further, that he was caring for four children of his deceased son for whom he had reserved land reference Kiambu/Lari/708.

The Defendant further stated that his first wife died on 22nd July, 2010 and that he filed Succession Cause No. 44 of 2011 at Limuru Law Court where upon confirmation of the Grant he withdrew all the savings he had with the Deceased, and shared the money amongst all their children including the Plaintiffs. Further, that considering his age and the fact that his children do not offer any kind of support to him, he had found it necessary to marry his current wife.

The parties were directed to file written submissions, which they relied upon for the ruling herein. The Plaintiffs' counsel in submissions dated 16th June 2013 reiterated the arguments made by the Plaintiffs herein, and further argued that the fact of registration of the suit properties in the Defendant's name did not mean that the Plaintiffs had no interest in the same, and that they did have an interest having jointly constructed rental houses on land parcel number Kiambu/Lari/704 with their deceased mother and the Defendant. Further, that land parcel number Kiambu/Lari/1934 is where the family home was situated, and the counsel urged the court to note the contemptuous conduct of the Defendant in disposing of land parcel number Kiambu/Lari/1918 during the pendency of the Plaintiffs' motion and suit.

The Defendant's counsel in submissions dated 1st April 2013 reiterated the facts stated in the foregoing in opposition to the Plaintiff's Notice of Motion, and argued that the Plaintiffs are only trying to stop their step mother from inheriting or benefiting from the suit properties, and that the Defendant is registered as an absolute owner of the suit properties, and was not registered subject to any trust. Further, that the Plaintiffs have not shown a *prima facie* case with a probability of success.

Having considered the pleadings and arguments made by the parties, I note that the Plaintiffs claim to be beneficiaries to the suit properties, which they state is registered in the Defendant's name as their trustee. They have produced evidence to show that the suit properties are indeed registered in the Defendant's name. They also state that they have contributed to the construction of the residential houses on the suit properties, particularly on Kiambu/Lari/704. The Plaintiffs have however not brought any evidence of their contribution to the development of the suit properties as alleged.

This finding notwithstanding, I note that this is essentially a dispute between family members and the concept of a trust relationship arises given their relationship. The disputed property therefore ought to be preserved pending the determination of the suit herein and of the rights of the respective parties. There is also need to preserve, and avoid further deterioration of the familial relationship between the Plaintiffs and Defendant. The upshot of the foregoing findings is that I will decide the Plaintiffs' Notice of Motion on the basis of a balance of convenience.

In considering the balance of convenience I have noted the submissions made that Kiambu/Lari/1918 has already been sold by the Defendant, and that the Defendant is the registered proprietor and in occupation of the remaining suit properties. I accordingly order as follows:

1. That the *status quo* be maintained pending the hearing and determination of the suit filed herein or until further orders shall be as follows:

- a. The Defendant by himself, his agents, servants, or employees, shall not sell, transfer, and/or in any manner dispose of or alienate the properties known as KIAMBU/LARI/1934, KIAMBU/LARI/704 and KIAMBU/LARI/708.
 - b. The Plaintiffs shall not in any manner interfere with the Defendant's occupation and possession of the properties known as KIAMBU/LARI/1934, KIAMBU/LARI/704 and KIAMBU/LARI/708
2. The costs of the Plaintiffs' Notice of Motion dated 3rd December 2012 shall be in the cause.

Dated, signed and delivered in open court at Nairobi this ____23rd____ day of ____September____, 2013.

P. NYAMWEYA

JUDGE