



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 197 OF 2012

JANET KAUNDA MAKAU.....PLAINTIFF

VERSUS

1. SULTAN CHAI NGAO

2. ADAM NGAO

3. MFEKE NGAO

4. MUSEMBI NGAO

5. KAPOLI NGAO.....DEFENDANTS

RULING

Before court is the notice of motion application dated 14th September, 2012 brought under certificate of urgency in which the applicant seeks *inter alia* the following prayers:

“1. THAT this Honourable court be pleased to certify this application as urgent and thereby accordingly dispense with service thereof.

2. THAT

3. THAT a temporary injunction be issued against the defendants by themselves, their servants and or agents and otherwise howsoever restraining them from entering, transferring, evicting the plaintiff herein or carrying out all and any construction on ALL THAT parcel of land known as L.R. Number 29077 situate at South East of Mariakani in Kilifi District (hereinafter referred to as “the suit premises”) pending the hearing and determination of this suit.

4. THAT”

The application was supported by the affidavit sworn by the applicant **JANET KAUNDA MAKAU** on 17th September, 2013. The respondents did duly enter appearance and on record is a Further Replying Affidavit sworn by **SULTAN CHAI NGAO** on 14th December, 2012. The application was to be argued by way of written submissions but despite having been duly served the respondents did not file any submissions in court. The matter is now for ruling.

The applicant claims that the suit premises belong to her deceased husband **PETER VICTOR MAKAU**. She has annexed a title deed issued in the name of the deceased. Similarly the applicant has annexed documents to prove that upon the death of her husband she was issued with a Grant to administer his estate. The said Grant was issued on 3rd February, 2011. The applicant claims that the respondents have invaded the suit premises and are thus hindering her quiet enjoyment of the same.

On their part the respondents whilst conceding that title to the suit premises vests in the applicants late husband, however claim that said title was obtained by way of fraud. The principles in granting interim injunctions were set out in the case of **Giello vs. Casmus Brown**. I have carefully considered the material before me. In my view the applicant has established a *prima facie* case and any harm caused by failure to grant the temporary injunction may not be adequately compensated by way of damages. I am satisfied of the merit of the applicant. However, I note that the respondents are in occupation of the suit premises. Therefore prayer (4), (5) and (6) seeking mandatory injunction and prayer (7) seeking a declaration of the applicant as the rightful owner of the suit land cannot be granted until the suit is heard and evidence adduced by both parties. As such I do allow prayer (3) of the notice of motion dated 14th September, 2012 save that the work '**entering**' shall be excluded from the order. As such the order granted will read:

“A temporary injunction be and is hereby issued, against the defendants by themselves, their servants and or agents and otherwise howsoever from transferring, evicting the plaintiff herein or carrying out all and any construction on ALL THAT parcel of land known as L.R. Number 29077 situate at South East of Mariakani in Kilifi District (hereinafter referred to as “the suit premises”) pending the hearing and determination of this suit.”

Costs of this application to be in the cause.

Dated and delivered in Mombasa this 16th day of December, 2013.

M. ODERO

JUDGE