



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND CASE NO. 103 OF 2011

SAMUEL NJUGUNA KAMAU PLAINTIFF

VERSUS

**JANE WAIRIMU NJUGUNA
SALIM MOHAMMED ABDALLA KANIKI DEFENDANTS**

RULING

The Plaintiff is the biological father of the first Defendant. The first and second Defendants are in a somewhat domestic relationship (the second Defendant is a cohabitee of the first Defendant). The Plaintiff registered **Plot No. 873 Mararui Farmers Company Limited** in favor of the first Defendant to hold it in trust for **M M W** a minor child of the first Defendant who is also the Plaintiff's grandchild. The plaintiff used to live with the grandchild whom he loves and cares for very much.

There was an attempt by the Defendants to register the plot in their names or to wind up the trust created thereby alienating the interests of the minor child for whom the plot is held in trust.

The child is not the biological child of the second Defendant. Since the child was born, she has lived with the Plaintiff. The Plaintiff confesses that he has no objection to the Defendants together the way they are, but he is apprehensive that if an agreement dated 7th January, 2009, which was signed by the Defendants and allegedly by the minor is executed and the plot is sold, the minor's interests will be compromised.

According to **Paragraph 5** of the agreement, it is stated that after completing the construction of the plot, the parties will sell the property and divide the proceeds from the joint venture and invest in other properties. The Plaintiff gave the plot to the first Defendant on the understanding that the plot shall be held in trust for the minor child, and it shall not be disposed of. Moreover, the validity of an agreement with a minor is an issue, and no money changed hands, it was a gift by the Plaintiff and to the minor child.

Mrs Rashid, learned counsel for the Plaintiff urged the court to confirm the interim order of injunction which is sought in the chamber summons dated 11th March, 2011. That application is supported by the grounds stated on the body thereto and the matters deposed to in the supporting affidavit sworn by Samuel Njuguna Kamau on 11th March, 2011.

This application was opposed; **Mrs Ngobi**, learned counsel for the first and second Defendants submitted that the Defendants can be presumed to be married for reasons that they have lived together and held themselves out as a married couple for many years. The second Defendant is, therefore, for all intents

and purposes a father of the minor. Further it is admitted that there is no intention to sell the property and indeed the Defendants have no interest to sell the property.

It is clear from the submissions by **Mrs Ngobi**, that the Defendants have no intention to sell the plot. In that case, the restraining order would not prejudice the Defendants. Secondly, the purported agreement was entered into and signed between the Defendants and the minor. The validity and the capacity of the minor to enter into an agreement is a serious triable issue.

Accordingly, I have no hesitation to find that the Plaintiff's application is meant to safeguard the rights of a minor and it has merit. The application discloses a prima facie case with a probability of success, it meets the threshold of granting an interim order of injunction.

Prayer Number 3, that is granted in the following terms:

3. *THAT an injunction to issue restraining the 1st and 2nd Defendants and/or their agents, servants and/or any other person from transferring, alienating, threatening, obstructing and securing a Joint Title to the 2nd Defendant or any other 3rd Party or in any other way whatsoever interfering with **PLOT NO. 873 MARARUI FARMERS COMPANY LTD** in Nairobi pending the hearing and final determination of this suit.*

Costs of this application will be in the cause.

Ruling read and signed this 17th day of February, 2012.

MARTHA KOOME
JUDGE OF APPEAL
Note:

This application was heard and concluded on 30th November, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceeded to write and append my signature thereto in my new capacity.