



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**

**ENVIRONMENTAL & LAND CASE 298 OF 2011**

**VERONICA WANGECHI KINGORI .....PLAINTIFF**

**- VERSUS -**

**STEPHEN WILFRED MWANIKI .....DEFENDANT**

**RULING**

The Plaintiff and Defendant in the suit herein are sister and brother. The Plaintiff has filed an application dated 22<sup>nd</sup> June 2011, wherein she seeking orders for a temporary Injunction restraining the Defendant, his agents or servants from entering, charging, transferring or interfering in any way with the suit premises known as DAGORETTI/THOGOTO/T.575 (herein referred to as the suit property) pending hearing of and the determination of this suit filed herein. The Plaintiffs grounds are that she has a *prima facie* case, and that the Defendant is threatening to sell the suit property which will cost the Plaintiff irreparable loss having been in possession for over 40 years.

I will restrict myself to the relevant averments made by the parties. The Plaintiff in a Supporting Affidavit sworn on 21<sup>st</sup> June 2011, a Further Affidavit sworn on 3<sup>rd</sup> August 2011 and a Responding Affidavit sworn on 23<sup>rd</sup> September 2011 states that she purchased the suit property whose original number was DAGORETTI/THOGOTO/T.14 in 1978 for the sum of Kshs 65,000/, and that the Defendant only tranfered to her ½ of the parcel namely DAGORETTI/THOGOTO/T.574 and is now threatening to sell the other half which is the suit property. She has attached copies of titles of the two properties as evidence, and of payments receipts the Plaintiff clams to have made in the Defendant’s name to Agricultural Finance Corporation in repayment of a loan.

The Defendant in his response in a Replying Affidavit sworn on 26<sup>th</sup> July 2011 and a Further Affidavit sworn on 11<sup>th</sup> November 2011 states that he purchased the Plot No. Dagoretti/Thogoto/T.14 from one Waweru Tororo in 1972, and he denied that the Plaintiff purchased the plot from him in 1978 or assisted him to repay loans owed as alleged or at all. Further, that it was out of his own free will that he decided to subdivide the plot into Dagoretti/Thogoto/T.574 and Dagoreti/Thogoto/T.575, and subsequently transferred Dagoretti/Thogoto/T.574 by way of gift to the Plaintiff, who fully participated in the subdivision and transfer process.

The Defendant stated that after the said subdivision he allowed the Plaintiff to farm subsistence crops on the suit property, and that her developments which include a semi-permanent house are all confined to the portion in her name, that is, Dagoretti/Thogoto/T.574. Further, that he is in possession of the suit property, and the Plaintiff only filed suit when the Defendant took the said possession.

The Plaintiff’s Advocate filed written submissions dated 13<sup>th</sup> December 2011 and argued that the Plaintiff has shown a *prima facie* case as she has been in continuous possession since 1978, and stands to suffer irreparable damage as she has nowhere else to go, and as the Defendant has refused to give her title and

will proceed to sell the suit property. The Defendant's Advocate in his submissions dated 9<sup>th</sup> March 2012 contended that the Defendant has always been the owner of the suit property, and at no time did he sell the land to the Plaintiff and had only allowed her to live on the land, and it is trite law as was held in **Mbira vs Gachuhi (2002) 1 E.A 137** and **Kasuve vs Mwaani Investments Ltd & Others (2004) 1 E.A 81** that permissive or consensual occupation of land is not adverse possession.

I have read and carefully considered the pleadings, evidence and submissions by the parties to this application. At this stage what I need to decide is whether the temporary injunction sought can be granted based on the requirements stated in **Giella v Cassman Brown & Co Ltd, (1973) EA 358**. The main issue therefore is whether the Plaintiff has shown a *prima facie* case. The Plaintiff's claim in the originating summons she filed herein dated 21<sup>st</sup> June 2011 is one of prescriptive rights over the suit property, and she is relying *inter alia* on her possession of the suit premises. The said possession has been admitted by the Defendant who claims it was consensual and not adverse. This is however an issue that can only be determined after full trial. I therefore find that the Plaintiff has established a *prima facie* case, and that even if the Defendant is the registered owner, it is necessary to preserve the suit property pending the determination of the suit filed herein.

Based on the reasons given in the foregoing this court hereby restrains the Defendant from selling, charging, transferring or in any way disposing of the suit premises known as DAGORETTI/THOGOTO/T.575, pending the hearing of and the determination of this suit filed herein. There shall be no order as to costs.

**Dated, signed and delivered in open court at Nairobi this \_\_\_\_28<sup>th</sup> \_\_\_\_ day of \_\_\_May\_\_\_\_, 2012.**

**P. NYAMWEYA**

**JUDGE**