

MARY WANJIRU KAMAU.....1ST PLAINTIFF/APPLICANT

WILSON KINGEE KAMAU.....2ND PLAINTIFF/APPLICANT

SUSAN MUTHONI KAMAU.....3RD
PLAINTIFF/APPLICANT

VERSUS

KAMAU KARARI.....DEFENDANT/
RESPONDENT

RULING

1. Mary Wanjiru Kama is the 1st plaintiff/applicant, Wilson Kingee Kamau is the 2nd plaintiff/applicant and Susan Muthoni Kamau is the 3rd plaintiff/applicant. The defendant/respondent Kamau Karari. The plaintiffs are seeking an order of temporary injunction against the defendant/respondent whether by himself, his agents, representative/assigns and anybody acting for him restraining her from transferring, selling, disposing off, alienating and dealing in any way with parcel of land known as Kiambaa/Kihara./3072 pending the hearing and determination of the suit and that the District Land Registrar Kiambu district its directed to register a prohibition over the said land pending the hearing and determination of this suit and that costs of this application be provided for.
2. The application is premised on 3 grounds; that the defendant had given parcel of land known as Kiambaa/Kihara/3072 to the applicants as a gift, that the suit land Kiambaa/Kihara/3072 is the plaintiff's ancestral land, and the respondent is attempting to sell the said parcel to a third party on act that is causing the applicants loss and damage. The respondent though served did not attend the hearing of the application. The respondent appointed Wiathiki advocates to represent him. The applicants filed 2 affidavits, a supporting affidavit by Mary Wanjiru kamau the 1st plaintiff and Wilson Kinge Kamau the 2nd defendant
3. The applicants aver as follows; the defendant is their father and the registered proprietor of their ancestral parcel of land known as Kiambaa/Kihara/3072 measuring about 0.54 hectares. That they are the children of the defendant's deceased wife. The defendant married again thereafter. That the said parcel of land was apportioned to belonging to her mother's family and that is where the defendant allocated to her and which they have carried development. That the defendant has been promising to transfer the said parcel of land into their names but he has failed to do so. That in mid October 2011 they were informed that their father was in the process of selling of the said land. That they are beneficial owners of the land, they have been in possession enjoying the said land. That they reported the matter to the D.O and their father was summoned for the matter to be investigated, that they have also placed a caution on the said land but they fear that the respondent is likely to interfere with the said caution they therefore pray that the Court issues an order of prohibition against the respondent prohibiting him from selling, transferring, alienating the said land. That they are likely to suffer great loss and damage, that the respondent does not reside on the suit land and has nothing to loss but they are likely to be left landless. That after the respondent was served with the hearing notice dated 4/4/12 he issued to all their tenants a notice to vacate on or by the 27/4/2012 and he has been threatening the tenants with eviction without a Court order. The respondent acts are causing them great loss and damage. The 2nd respondent deponed that he has no evidence that the respondent has sold the said land, but he is holding her ancestral land in trust and they are likely to be rendered destitute.
4. Counsel for the applicant in his oral submissions in Court asked the Court to note that the orders sought are declaratory but they are seeking that the Court preserves the suit by way of injunction. For a party seeking injunctive orders, one has to prove that they have a prima facie case with a probability of

success that they will suffer irreparable loss if the injunction is not granted and if the Court is in doubt then it will decide the case on balance of convenience(see *Geilla Vs. Cassman Brown Ltd E.A 1973*). The applicants claim that they are beneficial owners of the parcel of land. The defendant is the registered proprietor of the suit land. The applicant's averments that the land is ancestral land has not been challenged by the respondent. At this stage the applicant have shown that they have a prima facie case with a probability of success. The applicants fear that they could be left land less. This is genuine fear. It is evident that they will suffer irreparable loss if the ancestral land is transferred or sold or alienated. The balance of convenience in the absence of convenience to rebut tilts in favor of the applicant. I note that the applicants have not sought an injunction in the plaint, the main suit. They should have done so. They only seek a declaratory order. I have in mind the provisions of article 159 (2) (d) of the Constitution that gives Courts powers to administer justice without due regard to procedural technicalities. I will allow the injunctive orders although he applicant has not sought injunctive orders in the main suit. The applicant should endeavor to amend their plaint to include the prayers of injunction. I therefore find that the applicants are entitled to prayer No. 3 of the Notice of Motion dated 16/12/11. I grant prayer No. 3 that a temporary injunction shall issue against the defendant/respondent whether by himself, his agents, representative/assigns and anybody acting for him restraining her from transferring, selling, disposing off, alienating and dealing in any way with parcel of land known as Kiambaa/Kihara/3072 pending the hearing and determination of the suit. I decline to grant prayer No. 4. The applicants are seeking a prohibition and not inhibition. For an order of prohibition the applicants need to go to trial. On costs this being on family dispute costs shall be in the cause.

Orders accordingly

Dated, signed and delivered this 9th day of August 2012

R. OUGO

JUDGE

In the Presence of:-

..... For 1st Applicant

..... For 2nd Applicant

..... For 3rd Applicant

..... For the Respondent

..... Court Clerk