



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 663 of 2012

ELIZABETH MARY RUGURU MURIUPLAINTIFF

VERSUS

ROSE NYAMBURA NJUHIGA.....DEFENDANT

RULING

1. Elizabeth Mary Ruguru Muriu the plaintiff/applicant has sued Rose Nyambura Njuhiga through a plaint dated 2/10/12. Simultaneously with the said plaint she filed a Notice of Motion dated 2/10/12 brought under Order 40 rule 1(a) and (b) and Order 51 rule 1 of the Civil Procedure rules and Section 3A of the Civil Procedure Act, seeking orders of interim prohibitory injunction in prayers 4 as follows;

i. Spent.

ii. That Honourable Court be pleased to grant an interim prohibitory injunction to restrain the defendant/respondents, its agent, servant and/or employees or whosoever from entering ,invading or otherwise interfering with the plaintiffs lawful possession and quiet enjoyment of property known as plots 134 and 135 situate in Kamiti Corner Estate phase 4, pending hearing and determination of this application.

iii.Directions be given as to an early hearing date in respect of prayer 4 herein below.

iv.The Honourable Court be pleased to grant an interim prohibitory injunction to restrain the defendant/respondents, its agents, servants and/or employees or whosoever from entering, invading or otherwise interfering with the plaintiffs lawful possession and quiet enjoyment of property known as plots 134 and 135 situate in Kamiti Corner Estate phase 4, pending hearing and determination of this suit.

2. Her application is premised on the grounds stated on the face of the application as follows,

i. That the plaintiff is administratrix of the estate of her deceased husband.

ii. The plaintiff is the lawful allottee of the plots 134 and 135 situate in Kamiti Corner estate phase 4

iii. The plaintiff and her late husband jointly purchased the interest in the aforesaid plots.

iv. The process of subdivision and registration is underway.

- v. The plaintiff together with her late husband Daniel Njuhiga Muturu invested in the aforesaid plots and contributed equally towards the development of the said property.
- vi. The plaintiff has since the development and purchase of the property aforesaid lived in the said properties with her deceased Husband until he met his demise on 16th June 2008.
- vii. The respondent has no proprietary interests in the aforesaid properties and has no colour of right to seek or claim share of the suit premises.
- viii. The Respondent has in the meantime invaded the suit premises and has engaged in deliberate acts of destruction of the fence, trees and surrounding plantations in bid to gain forceful possession of the suit premises and/or eject the plaintiff.
- ix. In the circumstances, the applicant has prima facie case.
- x. The damage the plaintiff stands to lose is immense, and irreparable.
- xi. The application satisfies the threshold for grant of an interim injunction relief;

3. The respondent was served with the application but she did not attend the hearing. The matter therefore proceeded ex parte. In the plaintiff supporting affidavit dated 2/10/12 she avers as follows; she married Daniel Njuhiga Muturi under Kikuyu customary laws. Her husband died on the 16/6/08. That during the course of her marriage they purchase property known as plot No. 134 and 145 the subject land of this suit. They purchased them from Murarandia Development Company limited. On purchasing them they embarked on construction and development of the properties. They built their matrimonial home in 2003 and later move to Githurai 45. That at one time during their marriage they parted ways briefly but reunited in 2008 and lived together thereafter. That after her husband's demise she obtained letters of administration in respect of his estate. That she learnt during the funeral arrangement that the defendant was claiming to be a wife of her deceased husband. That on the 30/9/12 the defendant and her agents invaded the suit premises and brought down the fence and started cutting trees and grass in a bid to gain forceful possession of the 2 plots 134 and 135. That the said properties were jointly purchased by herself and her husband and the defendant's actions are violation of her fundamental rights to property. She therefore seeks the injunction to stop the defendant from further interference.

4. These facts as deponed by the applicant were not challenged. She has demonstrated through 'EMRM.3' that she has obtained letters of administration intestate of the estate of Daniel Njuhiga Muturi. She is a co-administrator to John Mwatta Muriu. She has annexed the plot allocation certificate No. 80028 for Plot No. 134 and 00034 for plot No. 135 both in her late husband's name. She has also annexed photographs that show destruction of property. All these prove that she has a prima facie case with a probability of success. She has shown the damage done by the defendant. Being the administrator of the late husband's estates she is entitled to protection. The balance of convenience tilts in her favour. I therefore grant prayer No. 4, a prohibition injunction shall issue restraining the defendant her agents , servants and or employees or whatsoever from entering invading or otherwise interfering with the plaintiff lawful possession and quiet possession of property known as plot 134 and 135 situate at Kamiti Corner Estate Phase 4 pending the hearing and determination of the suit.

Orders accordingly.

Dated, signed and delivered this 15th Day of November 2012.

R. OUGO
JUDGE

.....Plaintiff/Applicant

.....Defendant/Respondent

.....Court Clerk.