



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC. NO. 542 OF 2010

MUASYA KITHEKA	1 ST PLAINTIFF
SAMUEL KIARIE NJOROGE	2 ND PLAINTIFF
MARY WANJIKU MUCHA	3 RD PLAINTIFF
ESTHER WANGARI GITHENYA	4 TH PLAINTIFF
MONICAH WANJIKU WAIRIMU	5 TH PLAINTIFF
VIRGINIA WAIRIMU WAITHERA	6 TH PLAINTIFF
JANE WAMBUI NDUNG’U	7 TH PLAINTIFF
RACHEL WAMBUI MWANGI	8 TH PLAINTIFF
JANE WANJIKU KIMANI	9 TH PLAINTIFF
MARGARET WANJIKU GATERU	10 TH PLAINTIFF
SIMON NJUGUNA KAGI	11 TH PLAINTIFF
JOHN MAINA NJUGAGA	12 TH PLAINTIFF
JOHN NDUNG’U MUTURI	13 TH PLAINTIFF
LUCY NYOKABI MARION	14 TH PLAINTIFF
ZEPHANIA KABIRU KARIUKI	15 TH PLAINTIFF
ESTHER WANJIRU KARIUKI	16 TH PLAINTIFF
MONICAH NDUTA KIMANI	17 TH PLAINTIFF
MWANGI ERI KIARIE	18 TH PLAINTIFF
PAUL CHEGE ZAKAYO	19 TH PLAINTIFF
BONIFACE NYANJUI WANGUI	20 TH PLAINTIFF

V E R S U S

SAMUEL MAINA NJOROGE	1 ST DEFENDANT
JANE WANJIKU NGUGI	2 ND DEFENDANT

R U L I N G

The Plaintiffs’ case is that the 1st Defendant is the registered proprietor of land parcels Ruiru/Ruiru East Block 2/943 and Ruiru/Ruiru East Block 2/944 which he subdivided into plots in 2005. He sold various of the plots to them. They took possession of their respective portions and have been thereon with their families since. They came to court on 12th November 2010 because the 2nd Defendant, who is working in cahoots with the 1st Defendant, has issued notice to evict them. The plots have not been formally transferred. Filed along with the suit was a chamber application for a temporary injunction to restrain the Defendants from interfering with their occupation and possession of the parcels.

The 1st Defendant's response is that he is indeed the registered proprietor of the two parcels and to demonstrate this he annexed copies of the title deeds to the parcels in his name. Each was registered on 23rd July 1996. He admits he subdivided the parcels into plots which he sold to the Plaintiffs and gave them possession, but had not transferred to them. He was, however, shocked when the 2nd Defendant made claim to the two parcels and went to the Ruiru Land Disputes Tribunal which heard the dispute. It decided in favour of the 2nd Defendant. A decree was issued to evict him. The matter is now pending in the Court of Appeal. The parcels have a caution placed by the 2nd Defendant. The Court of Appeal matter is **Civil Appeal No. 58 of 2010 at Nairobi**, and is against the Ruling and Order by the High Court at Nairobi in **H.C. Misc. Civil Application No. 106 of 2008**. The 1st Defendant had gone to the High Court to challenge the decision of the Tribunal.

The 2nd Defendant's case is that she is the lawful registered owner of the two parcels of land and annexed copies of title issued on 26th August 1994. She deponed that the parcels have never belonged to the 1st Defendant who, therefore, had no capacity to sell the same to the Plaintiffs. She made reference to the Tribunal decision and fact that the 1st Defendant's application for leave to bring Judicial Review proceedings in the High Court case above was dismissed, and that is why the matter is now before the Court of Appeal. The 2nd Defendant has eviction orders obtained before the subordinate court at Thika following the Tribunal decision. She further deponed that the Court of Appeal had rejected the request for stay of execution. She annexed the Ruling of the Court of Appeal.

The present position is that the 2nd Defendant has been determined to be the registered proprietor of the two suit lands. Further her registration was earlier than the 1st Defendant's alleged registration. It has not been shown that there was any transaction between the two that would have led to the 1st Defendant becoming the registered owner of the parcels. It follows that, *prima facie*, the 1st Defendant had no interest in the parcels which he could have sold to the Plaintiffs. In other words, and for the purpose of this application, the Plaintiffs have not demonstrated a *prima facie* case with a probability of success in terms of **Giella –Vs- Cassman Brown & Co. Ltd [1973] EA 358**. As to whether the Plaintiffs will suffer irreparable loss or injury, it is clear that they each paid a specific price for a plot. That would be recoverable in damages.

Regarding the balance of convenience, the Plaintiffs are in possession but the 2nd Defendant is the registered owner and between the parties there is no privity of contract. The 2nd Defendant's claim would be superior.

In conclusion, I dismiss the application for temporary injunction with costs.

**DATED AND DELIVERED AT NAIROBI
THIS 7TH DAY OF MARCH 2011**

**A. O. MUCHELULE
J U D G E**