



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE (ELC)NO. 191 OF 2010

PENINAH WATIRI WACHIRA.....PLAINTIFF

VERSUS

JANE WAIRIMU NGUGI & ANOTHER.....DEFENDANT

RULING

Peninah Watiri Wachira hereafter referred to as the applicant has filed a suit against Jane Wairimu Ngugi and Muriithi Mahiu Nguru herein after referred to as the 1st and 2nd respondent. The applicant seeks judgment against the respondents jointly and severally for:

- a) A declaration that the sale of plot No. B1717 Phase II Dandora between Muriithi Wamahiu Ngugi and Jane Wairimu is null and void, and the aforesaid sale be cancelled.
- b) A permanent injunction restraining the 1st and 2nd defendants by themselves, agents and servants and whosoever trespassing, altering, selling, transferring, letting, claiming ownership and or any way interfering with Plot No. B1717 Phase II Dandora, Nairobi.
- c) Costs of the suit.

The applicant now seeks an order of interlocutory injunction restraining the 1st and 2nd respondents by themselves, servants, agents or whoever from trespassing alienating, disposing transferring, letting, claiming ownership and or in anyway interfering with plot No. B1717 Phase II Dandora, pending the inter-parte hearing and determination of this suit.

In support of the application the applicant has sworn an affidavit explaining that the suit property belongs to her deceased mother, and that the applicant is the administrator of the deceased's estate. Although duly served with the application the 1st respondent did not file any response to the application nor did she attend court for the hearing of the application. The 2nd respondent filed a replying affidavit in which he

maintained that he bought the suit property from the 1st respondent with full knowledge of the applicant. He claimed that he was given possession of the suit property on 26th October 2009 and is thus not a trespasser.

Upon considering the application and the submissions of both counsel, I find that the applicant has provided prima facie evidence showing that she is the administrator of the estate of the late Rebecca Wambui Kamau who died on 29th December 1992, and that as per the certificate of confirmation of grant which was issued on 29th April 1994, the deceased's property identified as Plot No. B1717 Dandora Estate was to be registered in the name of the applicant and 1st respondent to hold in trust for the deceased's children.

The documents availed to the court show that the suit property was allegedly sold to the 1st respondent by Rebecca Wambui on 15th February 2005, and that Rebecca Wambui signed a power of attorney on 29th May 2009 in favour of the 1st respondent in respect of the suit property. These transactions are suspect given that Rebecca Wambui Kamau who was the original owner of the suit property is deceased.

I am satisfied that the applicant has established a prima facie case with regard to the propriety of the 1st respondent's right to transfer any proper title to the 2nd defendant with regard to the suit property. Accordingly it is appropriate that the suit property which is the subject matter of the applicant's suit, should be preserved. I therefore allow the chamber summons dated 26th April 2010 and issue an order of interlocutory injunction in terms of prayer (1). Costs shall be in the cause.

Dated and delivered this 29th day of July, 2010.

H. M. OKWENGU

JUDGE

In the presence of: -
Wachira for the plaintiff/applicant
Advocate for the defendant/respondent absent
Eric Court clerk