



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.59 OF 2011

BEATRICE IMBWEYA ALUMASI.....PLAINTIFF

VERSUS

GERALD ALUMASI.....1ST DEFENDANT
CHARLES NGIRUBIU.....2ND DEFENDANT
ESTHER WAITHERA KARANJA.....3RD DEFENDANT

RULING

1. By a notice of motion dated 15th February, 2011, Beatrice Imbweya Alumasi the plaintiff/applicant herein seeks that a temporary injunction be granted restraining Gerald Alumasi, Charles Ngirubiu and Esther Waithera Karanja, the defendants/respondents herein or their servants, agents and/or licensees from levying distress, evictions and/or interfering with the quiet enjoyment of the applicant’s house in the premises known as Plot L.R Nairobi Block 73/328 Buruburu phase 1 (hereinafter referred to as the suit property), until the hearing and determination of this suit; that the defendants respondents be ordered to pay the costs of this application.

2. The application is grounded on the following facts:

The plaintiff and the 1st defendant are husband and wife. The suit property has been their matrimonial home. The 1st defendant moved out of the matrimonial home 12 years ago and left the plaintiff and the children residing in the suit property. The 1st defendant purported to sell the suit property without the knowledge or consent of the plaintiff. The 1st defendant has now colluded with the 2nd and 3rd defendants to fraudulently sell the property to the 2nd and 3rd defendants. The plaintiff maintains that unless the order of injunction is granted she will suffer irreparable loss as her family will have no home.

3. The 2nd and 3rd defendants have filed grounds of objection contending that the plaintiff’s suit does not disclose any reasonable cause of action against the 2nd and 3rd defendants who are not the registered

proprietors of the suit property. Further, that the 2nd and 3rd defendants are innocent purchasers for value without notice. And finally that the plaintiff has no proprietary interest in the suit property and cannot in law bring and maintain this suit.

4. The 1st defendant also has filed a replying affidavit denying the plaintiff's allegations that he walked out of the matrimonial home. The 1st defendant maintains that he acquired the suit property through a mortgage facility with Kenya National Assurance Company 2001 Ltd. Since he was having difficulties in paying the loan he was compelled to negotiate the sale of the suit property to avoid the Chargor exercising his statutory power of sale. The 1st defendant maintains that he no longer has any proprietary interest in the suit property.

5. I have carefully considered the application and the submissions made by counsel. Although the plaintiff claims that the suit property is matrimonial property, it is evident that the 1st defendant purchased the suit property through a mortgage and that he was the sole registered proprietor of the suit property. The plaintiff has not demonstrated any prima facie evidence of any contribution made towards the purchase of the suit property.

6. Further, the plaintiff has apparently come to this court after the 1st defendant has sold the suit property to the 2nd and 3rd defendants who are now the registered proprietors of the suit property. The 2nd and 3rd defendants contend that they are innocent purchasers for value without notice. The plaintiff disputes this. Nonetheless, she has not been able to demonstrate otherwise. I sympathize with the plaintiff and her children. However, she has come to the court too late in the day. She ought to have come before the 1st defendant transferred the suit property to 2nd and 3rd defendants. I find that the plaintiff has failed to establish a *prima facie* case with a probability of success.

7. For the above reasons, I dismiss the application dated 15th February, 2011.

Dated and delivered this 22nd day of July, 2011

H. M. OKWENGU

JUDGE

In the presence of: -

Advocate for the plaintiff absent

Muchoki for the 1st defendant

Kamau H/B for Macharia for the 2nd defendant

B. Kosgei - Court clerk