



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
LAND AND ENVIRONMENTAL DIVISION

CIVIL SUIT NO. ELC 2261 OF 2007

TERESIAH WAMBUI WAIREGI.....PLAINTIFF

VERSUS

MAINA MWAURA.....1st DEFENDANT
MARGARET KIGIO MAINA.....2nd DEFENDANT

RULING

The application dated 25th July 2011 is seeking an injunctive order to restrict the Plaintiff/Respondent from all dealings whatsoever involving the land parcel registered as RUIRU/RUIRU/EASTBLOCK 2/5277, hereinafter referred to as the suit property. The 2nd Defendant/Applicant avers that she has been the *de facto* owner of suit property, and has continually enjoyed peaceful occupation of the suit property with her family since the year 1986. The 2nd Defendant/Applicant further avers that she has since discovered that the suit property was fraudulently registered in the name of the Plaintiff/Respondent, and that there is a danger of the suit property being sold to third party buyers.

The Plaintiff/Respondent is the registered owner of the suit property and has not responded to or opposed the said application. The Plaintiff/Respondent in her Complaint filed on 8th November 2007 states that the Defendants/Applicants have without her consent entered into and erected some structures on the suit property. The Plaintiff further states that the Defendants/Applicants have jointly placed a caution in the Thika lands registry claiming a purchasers interest. The Plaintiff denies ever having entered into a sale agreement with the Defendants/Applicants and that their entry into the suit property is without her consent. There is also evidence that the Plaintiff/Respondent has filed an application at the Thika Chief Magistrate's Court to evict the Defendants/Respondents from the suit property.

I have read and carefully considered the pleadings and evidence by the respective parties to this application. Given that the ownership of the suit property is what is in dispute, and the suit property is already registered in the Plaintiff/Respondent's name, I cannot make a finding of a *prima facie* case in favour of the Defendants/Applicants according to the principles set out in **Giella vs Cassman Brown & Co Ltd** (1973) EA 358. Consequently, I can only decide the Defendants/Applicants' application on the

basis of a balance of convenience. The Defendants/Respondents are the parties in occupation and have made the suit property their family home. The Defendants/Respondents evidence in this regard was not controverted and is hereby accepted. The Defendants/Respondents are the ones who stand to be more prejudiced if the orders sought are not granted. For this reason I grant an injunction in terms of prayer 2 of the application dated 25th July 2011. The costs of the application shall be costs in the cause.

Dated, signed and delivered in open court at Nairobi this 3rd day of November, 2011.

P. NYAMWEYA

JUDGE