



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENTAL & LAND CASE 190 OF 2009**

**BETH WANJA NJOROGE..... APPLICANT**

**VERSUS**

**SIMON MWANGI NJOROGE ..... 1<sup>ST</sup> DEFENDANT**

**WANJIRU NJOROGE..... 2<sup>ND</sup> DEFENDANT**

**RULING**

The Plaintiff brought this suit against the defendants claiming that the defendants have entered her property known as LR No.8083/3 yet she is the registered owner thereof. She now claims to be given possession of the suit premises; that the defendants be restrained by way of injunction from trespassing, entering or in any way interfering with the suit premises and also damages.

Alongside the said plaint, she filed an the application by way of Chamber Summons under Orders XXXIX Rules 1,2, and 9 and Rule 12 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The order sought is the same as that which is claimed in the plaint relating to the subject matter.

The grounds upon which the orders are sought are, among others, that the plaintiff is the registered owner of the said suit premises and that the defendants have wrongfully entered into the said premises and taken possession of the same. Unless restrained, the defendants shall continue trespassing upon the said premises. It is also the plaintiff's case that, the defendants have started to wrongfully construct permanent structures on the suit premises. Unless the defendants are stopped, the suit premises will be wasted and damaged.

The said application is supported by an affidavit sworn by the Plaintiff/Applicant. In reply thereto, there is an affidavit sworn by Lucy Wanjiru Njoroge who is the second defendant herein. The defendants opposed the application on the grounds that the suit premises do not belong to the plaintiff/applicant but a subject matter in High Court Succession Cause No. 782 of 2009 in respect of the estate of Bedan Njoroge Nduati. It is also the defendants' case that the subject matter is occupied by several beneficiaries of the estate of the late Nduati and that, if the same is registered in the name of the Plaintiff/Applicant this was fraudulent.

Both learned counsel for the parties have filed written submissions to address the contentious issues herein. These I have read.

At this stage the Plaintiff /Applicant is supposed to show that she has a *prima facie* case with a probability of success. She is also to show that if this order is not granted in her favour she stands to suffer loss that cannot be adequately compensated by way of damages, and if the court is in doubt it shall decide the matter on a balance of convenience.

From the material before me, it is clear that this is a family dispute. There are succession proceedings which have not been completed. It is also clear that there is a title in favour of the plaintiff which however, is disputed by the defendants.

The bottom-line is that there are competing interests by both parties in respect of the suit premises. In such a case I am inclined to address the interests of the parties by preserving the subject matter, and therefore the application by the plaintiff/applicant succeeds to the extent that, the defendants and the plaintiff/applicant in equal measure shall not interfere with the suit property to the detriment of one another.

This order shall subsist until this case is heard and finalized. There shall be liberty to apply. Costs in the cause.

Orders accordingly.

*Dated, signed and delivered at Nairobi this **23rd day of February, 2010.***

**A. MBOGHOLI MSAGHA**  
**JUDGE**