

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Environmental & Land Case 82 of 2010

ANNA RUGURU NJOMOPLAINTIFF

V E R S U S

PETER KANGARA KARANJA1ST DEFENDANT

KIMANI KIMUHU2ND DEFENDANT

R U L I N G

The land in dispute that is LR. No. NDUMBERI/RIARA/814, now belongs to the Defendants as registered proprietors. Such registration would give them a *prima facie* absolute and indefeasible claim to the land, and it is unusual to injunct such an owner of land as it is a necessary incident of ownership to have full and exclusive possession. (See **CHERUIYOT –VS- BARTIONY [1988] KLR 422**).

The Plaintiff alleges the land belonged to her late mother MARGARET WARUTHU NJOROGI. She died on 29th March, 2009. On 20th November, 2009 the Plaintiff filed succession proceedings at Kiambu Court to succeed her. The proceedings are pending. When she went to the lands registry at Kiambu she found that the Defendants had since become the registered owners, yet they had not filed any other succession proceedings. The suit was brought to cancel the registration. The Defendants are children of the Plaintiff's late brother. Her fear is that the Defendants may dispose of the land. The injunction application was brought to restrain the Defendants from entering, trespassing, transferring or in any other way dealing with the land until the suit is heard and finalized. Fraud was alleged against the Defendants, but there were no particulars as is required by **Order 6 rule 8(1) (a)** of the **Civil Procedure Rules**.

The Plaintiff is daughter of the deceased and has gone to court to succeed her. The deceased owned the land. The Plaintiff is not saying she has obtained grant of letters of administration. Her capacity to sue has not been disclosed. Further, she is not saying in the plaint or supporting affidavit that the Defendants have trespassed on the land, or that they have no interest in the land.

In short, the Plaintiff has not demonstrated a *prima facie* case with a probability of success to be able to merit an interlocutory injunction. (See **GIELLA –VS- CASSMAN BROWN & CO. LTD [1973] EA 358**). There was no effort to demonstrate that if the injunction is not granted she will suffer injury which damages may not compensate. The balance of convenience must tilt in favour of the Defendants who are the registered proprietors.

DATED AND DELIVERED AT NAIROBI

THIS 12TH DAY OF MARCH 2010

A. O. MUCHELULE

JUDGE