



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**MILIMANI LAW COURTS**

**Environmental & Land Case 626 of 2009**

**MARY NJERI KIARIE .....PLAINTIFF**

**V E R S U S**

**TAFUTA DEVELOPMENT CO. LTD .....DEFENDANT**

**R U L I N G**

Land Number 6845/154 situate at Utawala Estate in Nairobi is in the name of the deceased SAMUEL KIARIE KIRIMIRE who was the husband of the Plaintiff. Following his death the Plaintiff and her co-wife obtained joint letters of administration on 3<sup>rd</sup> January, 2002 which were confirmed on 23<sup>rd</sup> January, 2002 and the Plaintiff ordered to hold the in trust for her children.

The Defendant states that before the deceased died, on 10<sup>th</sup> September, 1992 he sold this land to one of its directors called STEPHEN MUTUA MBITHI who transferred it to the Defendant. The agreement is "SMMI". The Defendant states that it has since subdivided the land into plots which have been sold to third parties. The land, it appears, had not been transferred from the deceased as the same is still in his name. The Plaintiff states that she was not aware of the alleged sale. The deceased was a shareholder of GITHUNGURI NJIRU FARM (1966) LTD who allocated the land to him. Title deed had not been processed. The Plaintiff is in the process of acquiring title. On the other hand, the Defendant is trying to process title to the persons it sold the plots to. It would appear that GITHUNGURI NJIRU FARM (1966) LTD are the present registered owners.

The Plaintiff sought a permanent injunction against the Defendant, its agents, servants and or employees from trespassing subdividing, disposing and/or interfering with the suit premises. She also sought their eviction. With the suit was filed a chamber application under **Order 39 rules 1, 7 and 9** of the **Civil Procedure Rules** and **section 3A** of the **Civil Procedure Act** for interlocutory injunction. This is the application under consideration.

The parcel of land has been valued at KShs. 7.5 million ("MNE 3"). The title is in the name of GITHUNGURI NJIRU FARM (1966) Ltd which allocated it to the deceased who was its shareholder. The Plaintiff has succeeded the deceased and the court has given her the land to hold in trust for her children. The Defendant says he bought it from the deceased. However, the land had not passed to him by the time the deceased died and he did not participate in the succession proceedings. The Defendant has subdivided the land and given plots to third parties. Those parties have no title. They can only get titles, if at all, through the Defendant.

It would appear that GITHUNGURI NJIRU FARM (1966) Ltd and these third parties will have to be joined into this dispute for the

court to effectively determine all the issues in controversy. For the time being, I find, the Plaintiff has a prima facie better claim to the property in dispute. This is when one considers the principles enunciated in the case of **GIELLA –VS- CASSMAN BROWN & CO. LTD [1973] EA 358**. The other way of looking at this dispute is that the interests of justice will be better served by preserving the property that is already in the hands of the Defendant and persons it has sold to. Otherwise, the property may be further sold and thereby put the Plaintiff to irreparable loss. An order will therefore issue restraining the Defendant and all those acting under him from further subdividing, selling or disposing of the land and the plots until the suit is heard and determined. This order is made in the wide interest of justice. I ask that costs abide the suit.

**DATED AND SIGNED AT NAIROBI**

**THIS 3<sup>RD</sup> DAY OF MAY 2010**

**A. O. MUCHELULE**

**J U D G E**