

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Suit 3 of 2008

MARGARET WANJIKU RUGA.....PLAINTIFF

VERSUS

WILLIAMSON WAITITU MACHARIA.....DEFENDANT

RULING

This ruling is delivered in the plaintiff/applicant's chamber summons dated 15th December 2008. In it the applicant seeks temporary orders against the defendant/respondent restraining him, his agents, and/or servants from;

“entering into and/or doing anything (in) and interfering with the plaintiff/applicant's quiet possession and occupation of land parcel No. NAKURU MUNICIPALITY BLOCK 14/531 pending the hearing of the suit.”

Interim restraining orders in the above terms were issued at the ex parte stage of the application but the same appear to have lapsed.

The applicant's claim is founded on an agreement for sale executed between herself and the registered owner of the suit premises pursuant to which she paid the entire purchase price for the said plot. Annexed to her affidavit, filed in support of the application, are copies of the said agreement and receipts evidencing payment. Although she claims to be the registered owner of the plot the document of title annexed to the supporting affidavit is in the name of the vendor, Peter Njuguna. At the hearing of the application, which proceeded as if ex-parte, for the reason that the respondent, though served, had not filed any reply, counsel for the applicant submitted, however, that she claims a purchaser's interest.

The applicant depones in her affidavit that the respondent made threats in regard to the parcel as soon as she took possession and on 12th December 2008, he entered the parcel and started installing water with the intention of constructing thereon. As is evidenced by copies of correspondence annexed to the supporting affidavit, the respondent appears to have negotiated with the vendor to buy the same parcel of land and also paid part of the purchase price. He failed to pay the balance and the intended sale was rescinded. The sum paid by respondent towards the purchase price was refunded to him through his lawyer as is evidenced by a letter marked “Ex V”, which clearly stated that the sale to the respondent had been rescinded as a consequence of his default and the property disposed of.

The only challenge raised to the present application by way of submissions by learned counsel, Mr. Karanja Mbugua, is that the prayers sought herein are inconsistent with the reliefs sought in the plaint and that the essentials for the granting of an injunction have not been met.

I must agree that there are a few flaws in the application as framed. Firstly, the applicant claims to be the registered owner of the suit property when clearly she is not. She also says she is in occupation, yet in paragraph 8 of the supporting affidavit she claims to have become aware of the respondents alleged “forcible entry” into the land when “on 13th December 2008 (she) visited the plot” and found the defendant having entered the plot and put up a temporary structure and that he was living therein. The

above notwithstanding, however, I am of the view that considering the facts, which are not disputed, the applicant has established a prima facie case against the respondent who has not shown any justification for interfering with the suit land in the manner stated.

I have perused the defence filed herein as requested by counsel for the respondent and have noted that he claims to be true registered owner of the parcel in dispute and that he has all the rights to remain and occupy the same. He has not demonstrated the basis of his allegations of ownership and/or proprietorship rights or interest. Given his attitude I am persuaded that to refuse to grant the injunction herein would expose the applicant to the risk of irreparable loss, incapable of being compensated in damages. The defendant having only constructed a temporary structure I order and direct that the status quo ante obtaining as at the 12th December 2008 be restored and the respondent be restrained from further trespass and/or interference with the parcel of land pending the hearing and determination of the suit.

Costs of the application shall be in the cause.

Dated signed and delivered at Nakuru this 23rd day of July, 2009

M. G. MUGO

JUDGE