

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Environmental & Land Case 558 of 2008

GEORGE KAMAU NJUGUNGA 1ST PLAINTIFF

STEPHEN GATHECHA MBUGUA 2ND PLAINTIFF

VS.

FLORENCE WAIRIMU MBUGUA

PETER CHEGE KIARIE

GRACE WANJIKU MBUGUA

SYLVIA MURUGI MBUGUA DEFENDANTS

RULING

The plaintiffs have sued the defendants jointly and severally as administrators and personal representatives of the late Joseph Kiarie Mbugua in respect of parcels of land set out in the plaint herein. Alongside the plaint, they filed an application for an injunction to restrain the defendants from claiming any right or title through them or trespassing, occupying, constructing, developing or interfering with the plaintiffs' ownership, occupation and use of properties known as L.R. No. Nairobi/Block 119/574 and 575.

The application is opposed by the defendants who have also filed replying affidavits alongside their defence claiming ownership of the disputed property. What is clear from the pleadings and the affidavits herein together with their annexures is that both parties have competing interests in respect of the suit property.

I have therefore had to balance several facts relating to the granting of an order of injunction as sought by the plaintiffs. It would appear that both parties have a claim or put the other way a *prima facie* case that is capable of withstanding the principles of law. In that case, it would not be appropriate for me to consider the issue of damages and I believe the best way is to accommodate the principle of balance of convenience such that the suit property or properties are preserved pending the hearing and final determination of the issues herein.

In that case therefore, the appropriate order in this case is that, both parties shall be restrained from interfering with the property/properties in question to the prejudice of the other. I note that the defence has been filed, and therefore to facilitate expeditious disposal of the case, parties would have to comply with the pre-trial steps so that this matter can be listed for hearing.

Orders accordingly.

Dated, signed and delivered at Nairobi this 24th day of November, 2009.

A. MBOGHOLI MSAGHA

JUDGE