

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT Nyeri

Civil Case 34 of 2008

ELIZABETH W. GACHIHI PLAINTIFF

Versus

NDIRITU GIKARIADEFENDANT

RULING

The plaintiff in bringing this action alleges that the suit property **AGUTHI/MURUGURU/1203** was given to her late husband by his deceased father. Her late husband is said to have allowed the defendant to use part of that land. In January 2008 the defendant was requested to vacate that land which he did. He later threatened to return to the land to use the same. In the final prayers of the plaint the plaintiff seeks restraining orders to stop the defendant from entering the suit property. Further she seeks a prayer from the court that she has a higher interest in the land than the defendant. Before the hearing of the suit the plaintiff has moved this court for interlocutory injunction restraining the defendant from destroying or entering on to the suit property until the determination of the case. In support of that application the plaintiff deponed that the suit property is registered in the name Michael Gachihi Mbui. The plaintiff has been using the suit property and presently has planted Amarathi Plants on the 6 acres of that land. She stated that that was commercial use of the land. The plaintiff deponed that the defendant has threatened to enter in to the land and interplant his own crops on that land. The defendant replied to that application which he opposed. He stated in that affidavit in reply that the late husband of the plaintiff during his life time was entitled to the suit property. He confirmed that plaintiff's late husband was given that land by his deceased father. The plaintiff's late husband did not however transfer that land in his name during his life time. The land to date therefore is still registered in his deceased father's name. The defendant deponed that he purchased two acres of land from the plaintiff's late husband. For the two acres he paid Kshs. 130,000 which was the value of a motor vehicle KUX 466. Further he stated that his wife paid to the plaintiff's late husband Kshs.120,000. Later on he agreed to buy an extra acre and made payment for it. The defendant annexed papers showing the plaintiff's late husband acknowledgement of those payments. The defendant entered on the land in the year 2003. In February 2008 the plaintiff requested for her 3 acres from that land. He surrendered to her those three acres and he remained with the three acres he had purchased. It was at that time that the plaintiff began to claim his three acres. The defendant stated that the plaintiff is related to him because he is married to the sister of the plaintiff's late husband. He concluded by saying that the transaction was done in good faith between family members. The defendant argued that the plaintiff did not have *locus standi* to bring the present action. The plaintiff in her further affidavit accused the defendant of making untrue statements. She denied that the defendant was in occupation of the land from the year 2002. Further she stated that she had obtained a limited grant of letters of administration in respect of her late husband's estate. It is clear that the plaintiff even though she has moved the court for an injunction has no propriety right over the suit property. The property is still registered in her deceased father in law's name. The principles of injunction are that the applicant has to show that they have a *prima facie* with probability of success. That the damage that would be suffered could not be compensated by damages; and if the court is in doubt in respect of those two principles, the court should decide an application on where the balance of convenience lies. In respect of the first principle the defendant was right in submitting that the plaintiff had no *locus standi* to make the present application. This indeed was the holding in the case of **NAIROBI PERMANENT MARKETS SOCIETY AND OTHERS vs SALIMA ENTERPRISES AND OTHERS** where the court held:-

“The appellants had not disclosed or established any right or interest that they might have in the suit

land and, in the absence of that, they could not expect a court to interfere with the first respondent's right of ownership. They therefore had no right to be heard and had no locus standi, prima facie to bring an action against the respondents."

Plaintiff by the mere fact of not being the registered owner of the suit property nor having Letters of Administration in respect of the estate of the deceased father-in-law leads the court to find that she has no *locus standi* in this case. That being the finding, the plaintiff then has failed to show she has a prima facie case with a probability of success. The court being not in doubt in respect of that principle and because the plaintiff has failed to show that the loss she will suffer cannot be compensated by damages, I find that the application does fail. Accordingly the chamber summons dated 26th March 2008 is hereby dismissed with costs to the defendant.

DATED AND DELIVERED THIS 25TH DAY OF JUNE 2008

MARY KASANGO

JUDGE