



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 2115 of 2007

SALOME WAINJIKU NJUGUNA PLAINTIFF

VERSUS

JOEL KUNGU WAINAINA 1ST DEFENDANT

WILSON WAITHAKA G ITAU 2ND DEFENDANT

RULING

APPLICATION FOR INJUNCTION DATED 14 MAY 2008

I: Background

1. The plaintiff/applicant one Salome Wanjiku Njuguna is the wife to one Francis Njuguna Kungu. She filed suit against the two defendants being Joel Kungu Wainaina and Wilson Waithaka Gitau claiming that the two had fraudulently sold land parcel LR No. Kiganjo/Gachika 2/1331 from one to the other.

2. The suit was filed on 22 December 2006. No action on the file took place until 14 May 2008 when under certificate of urgency the applicant filed injunctive orders seeking to restrain the two defendants from transferring the said propriety to the buyer.

3. The defendant appeared through their advocates and brought to my attention Hccc case No.200/98.

Joel Kungu Wainaina

V

Francis Njuguna Kungu

Hccc200/98

4. In this case, brought under TORT the plaintiff had sued the defendant for Battery. He was found 100% liable and damages amounting to Ksh.180,000/- was awarded to the said Joel Kungu Wainaina (Ombinja J) 21.2.02. The defendant had no assets. His land was auctioned and bought by the 2nd defendant in this present case.

5. The defendant No.1/respondent showed to court that there was fraud on the plaintiffs applicants part as she attempted to change the status of the matter by transferring the land from her husband to

himself and her children.

6. The application for injunction was duly opposed.

II: Opinion

7. It is important at all times that there be disclosure of material facts. The applicants/plaintiff failed to disclose the existence of the earlier case of Hccc200/98 - the cause of the land being auctioned and sold. Judgment was entered (Ombija J 21.2.02) and the transfer occurred in the year 2005 and 2006. It was noted that the respondent had filed prohibitory orders on 6.11.03 but the registrar failed to register this until 29 January 2007.

8. I accordingly hold that there is no prima facie case made out for an injunction to issue. The application is dismissed with costs to the respondents defendants.

DATED THIS 26TH DAY OF SEPTEMBER 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

J. Kariuki instructed by the Jessee Kariuki & Co. Advocates for the plaintiff/applicant – present

K. Njai instructed by Kiania Njau & Co. Advocates for the defendant/respondent – present