

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Case 8 of 2007

AYUB KINYUA MUNYIRI.....1ST APPLICANT/PLAINTIFF
CATHERINE WANJIRU MUNYIRI2ND APPLICANT/PLAINTIFF
DAVID MAINA MUNYIRI.....3RD APPLICANT/PLAINTIFF
JULIET MUTHONI MUNYIRI.....4TH APPLICANT/PLAINTIFF

Versus

SIMON MUNYIRI KINYUA.....1ST DEFENDANT/RESPONDENT
WAMAE KINYUA.....2ND DEFENDANT/RESPONDENT

RULING

The plaintiffs herein have filed a Chamber Summons dated 22nd February 2007. The application is brought under *Order XXXIX Rule 1 & 2* of the Civil Procedure Rules and *Section 3A* of the Civil Procedure Act. The Plaintiffs seek to restrain the Defendants from selling or transferring parcel No. RUGURU/GACHIKA/1387 to the 2nd Defendant or any other person. In the affidavit in support of that application, the Plaintiffs deponed that the 1st Defendant sold that parcel of land to the 2nd Defendant without the Plaintiffs' consent and that the Plaintiffs' consent was necessary because they are beneficiaries. They have asked the 1st Defendant to explain why he was selling the land without their consent but he declined to explain. On 25th September 2006 they registered a caution on the land. That despite that caution they are apprehensive that the 1st Defendant will dispose off the land which they described as their matrimonial home. For that reason they sought orders to stop the 1st Defendant from selling.

The 1st Defendant opposed the application by his affidavit sworn on 25th May 2007. He stated all the Plaintiffs were his children. That they had no claim over his land when he was alive. They are all over 18 years old and the 2nd and 4th Plaintiffs are married and were living with their husbands. He further stated that he has not sold the whole portion of that land but that rather he sold only 0.5 acres. The 2nd Defendant also swore an affidavit dated the same day. He stated that he is a buyer of that land and has nothing to do with the Plaintiffs. He further stated that the application has no merit. The advocate for the Plaintiffs in his submission stated that the Plaintiffs seek the orders because if the 1st Defendant did proceed with the sale they would be rendered destitute.

I have considered the application by the Plaintiffs. What the Plaintiffs seek is injunctive orders. Their application therefore has to comply with the principles of granting an injunction. These were enunciated by the case of *GEILLA -V- CASSMAN BROWN & CO. LTD. [1973] E.A. 358*. They are as follows:

“An applicant must show a prima facie case with a probability of success; an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury; when the court is in doubt, it will decide the application on the balance of convenience.”

The Plaintiffs essentially need to show that they have a *prima facie* case with probability of success. The affidavit in support of the application deponed that the Plaintiffs are beneficiaries. The Plaintiffs did not expound on this. They further stated that the land is matrimonial home. They did not controvert the averments of the 1st Defendant that they are all his children. If that be the case, the court does not understand how they can term that property as matrimonial home. I find that the Plaintiffs fail to show that they have a *prima facie* case with probability of success. I also do not find that they have said that if the sale proceeds they would suffer irreparable loss. They therefore have also not fulfilled the second principle. I find that I have no doubt that the Plaintiffs have failed to prove the first two principles of granting an injunction and accordingly I will not consider where the balance of convenience lies. The Plaintiffs' application therefore by way of Chamber Summons dated 22nd February 2007 is hereby dismissed with costs to the Defendant.

Dated and delivered at Nyeri this 27th day of July 2007.

MARY KASANGO

JUDGE