

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

Civil Case 1152 of 2005

VERONICAH WAITHERA MACHARIA.....PLAINTIFF

VERSUS

GLADYS NJERI KIAMA.....DEFENDANT

RULING

The plaintiff by way of this Chamber Summons expressed be brought under Order XXXIX Rules 1, 2 and 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeks orders that the defendant be restrained by an order of injunction from evicting the plaintiff from the suit land being LR NO. KIINI/KIBINGOTI/NGUNGUINI/2479 pending the hearing and determination of the suit and that the defendant by himself, his servants and/or agents be restrained by an order of injunction from disposing, selling, alienating, subdividing or wasting the suit land pending the determination of the suit.

The application is based on the ground that the suit property was part of the estate of KIAMA MUYU GICHIMU deceased, that one VENASIO WANJOHI GICHIMU petitioned and obtained letters of administration in respect of the estate of the deceased which letters were confirmed on 28th April 1995 that the plaintiff/applicant purchased the suit land from the said VENASIO WANJOHI GICHIMU in his capacity as the legal administrator of the deceased's estate, that the plaintiff was an innocent purchaser for value without notice. The application is also supported by sworn affidavit by the applicant in which she avers that she entered into a Sale Agreement with the said VENASIO WANJOHI GICHIMU as the legal administrator of the estate of the deceased KIAMA GICHIMU that the said administrator agreed to transfer the suit property LR NO. KIINI/KIBINGOTI/NGUGUINE/2479 at the purchase price of Sh.615,000/=, that the said purchase price was paid, and the suit land was transferred to her, that consequently the defendant/respondent filed summons for revocation and the grant issued to the said VENASIO WANJOHI GICHIMU that the application was successful and the grant was revoked, that having purchased the suit land for value and without notice, she is entitled to the suit property.

In support of her case the applicant produced the Sale Agreement entered into between her and the Administrator of the estate of KIAMA MUYA, (the deceased) which show that the subject matter of the Agreement was LR NO.KIINI/KIBINGOTI/NGUGUINE/761. While the confirmed grant shows that the same was distributed between 6 beneficiaries among them the said administrator who purportedly sold the suit land to the applicant before the estate was distributed. The title deed produced by the applicant is for LR NO.KIINE/KIBINGOTI/NGUGUINE/24791 which is not the one indicated in the sale agreement.

Further the agreement shows that the seller VENASIO WANJOHI GICHIMU was the registered owner of LR NO. KIINE/KIBINGOTI/NGUGUINE/761 which was not the case. The above fact coupled with the fact that the summons for annulment of grant were successful and the grant was annulled, the plaintiffs' application fails and the same is dismissed with no order as to costs.

Dated and delivered at Nairobi this 22nd day of March 2006.

J.L.A. OSIEMO

JUDGE

