

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 96 of 2005

EUNICE WANGECHI KIMOTHO 1ST APPLICANT

GRACE WAMBUI 2ND APPLICANT

JANE NJERI 3RD APPLICANT

NANCY NYAWIRA 4TH APPLICANT

IRENE WAMUYU 5TH APPLICANT

VERSUS

HELINA NGIMA KIMOTHO 1ST RESPONDENT

FLORENCE WANJIRU 2ND RESPONDENT

R U L I N G

Eunice Wangechi Kimotho, Grace Wambui, Jane Njeri, Nancy Nyawira and Irene Wamuyu (hereinafter referred to as the Applicants) have moved this court under section 128 of the Registered Land Act (Cap 300) and section 3A of the Civil Procedure Act seeking an order of inhibition against land parcel No. Othaya/Kihugiru/1926 (hereinafter referred to as the “suit land.” It is the applicants’ contention that the suit land was transferred to the 1st Defendant Helina Ngima Kimotho to hold in trust for the applicants, their sister Florence Wanjiru (hereinafter referred to as the 2nd Respondent) and the 1st Respondent.

Notwithstanding the fact that the applicants have jointly planted tea on the suit land the 1st Respondent has secretly transferred the suit land to the 2nd Respondent. Efforts by the applicants to prevent the transfer by registering a caution were frustrated by the rejection of their caution. The applicants have now filed a suit against the Respondent seeking a declaration that the 1st Respondent held the suit land in trust for them and has transferred the suit land to the 2nd Respondent subject to that trust. It is their contention that if an order of inhibition is not granted, the suit land may be disposed off and the substratum of their suit lost.

The Respondents object to the application. In a replying affidavit sworn on 21st February 2006, the 1st Respondent depones that the suit land was transferred to her to own absolutely and without any other interest or encumbrances. She maintained that she had the right to transfer the suit land to the 2nd Respondent as her right to the suit land was indefeasible. She further deponed that the 2nd Respondent does not intend to dispose off the suit land.

It is evident from the affidavit in support and in reply that the 1st Respondent who is the mother of the applicants was registered as the owner of the suit land and that she has now transferred the land to one of her daughters excluding the applicants. The circumstances under which the suit land was transferred to the 1st Respondent is not clear. Nor has the relationship between Danson Wachira Ndigirigi and the parties been revealed. Given the relationship of the parties, there is a possibility that the land may have been transferred to the 1st Respondent to hold in trust. Obviously that will be the main issue to be determined at the main hearing. If the suit land is disposed off before the suit is finalized the applicants may be prejudiced should they succeed in the suit. I therefore find it appropriate to issue an order of inhibition, inhibiting any dealings on the suit land until this suit is heard and disposed off.

I make no orders as to costs.

Dated this 21st day of March 2006

H. M. OKWENGU

JUDGE