

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 32 of 2004

FRASIA WANJIRU MAINA & 3 OTHERS.....APPLICANTS

VERSUS

ESTHER WACHUKA NJOROGE & 11 OTHERS.....DEFENDANTS

RULING

The applicants applied for interim orders of injunction to restrain the defendants jointly and severally, whether by themselves, their employees, servants or agents from alienating, charging or in any other manner dealing in Title Numbers LAIKIPIA/MARMANET/2222 to 2236 both numbers inclusive, hereinafter referred to as the “subject titles” pending the hearing and determination of this suit. They also applied for a prohibitory order restricting and/or restraining any transactions that would affect the subject titles directed to the Laikipia District Lands Registrar pending the hearing and determination of this suit. The application was supported by the affidavit of Peterson Maina Kimiti sworn on 30th February, 2004.

The application was made on the grounds that the mother title was allegedly acquired by the first Defendant herein on suspicious circumstances as would constitute fraud and/or illegality given that no petition for a grant of Letters of Administration or Probate had even been filed by the plaintiffs or the defendants or at all in respect of the estate of WAMAHIGA NJOROGE MUTITU (Deceased) who was the lawful allottee by the Settlement Fund Trustees of Plot No. 373 MARMANET SETTLEMENT SCHEME.

It was also stated that the defendants who were in possession of the subject titles had either orally advertised their respective parcels for sale and/or charge to commercial Banks with a view to denying the plaintiffs as well as other beneficiaries of the estate of the deceased rights to the suit premises and/or defeating the ends of justice.

In the said affidavit, it was deponed by Mr. Peterson Maina Kimiti that on 6th June, 1996 he entered into an agreement for sale of four (4) Acres to be excised from the suit premises at a consideration of Kshs.320,000/- with the deceased but the deceased succumbed to death before she had performed her part of the agreement. Recently the plaintiffs realised that the Settlement Fund Trustee had transferred the land to the first Defendant and a Title Deed had been issued in the first defendant’s name who had then sub-divided the property into 15 sub plots and obtained separate title deeds in respect of each sub-division. The plaintiffs sensed fraud and decided to involve the local District Administration, the Director of Land Adjudication and Settlement as well as their advocates in investigating the matter but while that was being done, the first Defendant was busy transferring one of the sub divisions, LAIKIPIA/MARMANET/2231 to Mary Wangui Ndaruku. The plaintiffs therefore feared that they may be disinherited of their rights by the defendants hence this application. The 1st, 2nd and 3rd plaintiffs stated that the deceased in her oral will had bequeathed various portions of the suit premises to them.

The defendants were served with the court process but only the first Defendant entered appearance but she did not oppose the application. All the other defendants did not enter appearance. The plaintiffs application had been certified as urgent on 4th February, 2004 and the plaintiffs directed to serve it and thereafter the application be listed for hearing within 14 days from the above date. The plaintiffs have on

a balance of probabilities shown that they have a prima facie case with a likelihood of success and they may suffer irreparable loss if the orders sought are not granted.

I therefore grant the plaintiffs application dated 3rd February, 2004 together with costs.

DATED, SIGNED & DELIVERED at Nakuru this 19th day of February, 2004

DANIEL K. MUSINGA

AG. JUDGE