

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL SUIT NO. 144 OF 2004**

HANNAH NYAMBURA WAMBUGU.....PLAINTIFF

VERSUS

JOHN WAMBUGU NDEMBUKO.....DEFENDANT

RULING

The Applicant filed an application dated 23rd June, 2004 praying for an order of injunction to restrain the Defendant by himself, his agents, servants and/or employees from entering, cutting down trees, erecting any structures or in any way whatsoever interfering with the land reference number NYANDARUA/OL'KALAU SOUTH/36 until the hearing and determination of this case.

She also prayed for a mandatory order of an injunction against the Defendant, his agents, servants and/or employees to compel him to deliver vacant possession of the aforesaid parcel of land.

The application was made on the grounds that the said parcel of land was allocated to the Plaintiff by the Settlement Fund Trustee in 1966 and that the applicant thereafter repaid the entire loan advanced to her by the Settlement Fund Trustee clearing the same in 1992 and was issued with a title deed in 1993.

It was alleged that the Defendant and his agents had invaded the land without consent of the Plaintiff and were causing irreparable damage to it.

In her affidavit in support of the application she stated that when she applied to be allocated the suit premises in 1966, her marriage to the Defendant was already in the rocks and after the allocation, she settled on the land with her children and lived there with them as a single parent in the absence of the Defendant and it was only in the year 2002 when the Defendant attempted to gain entry into the farm. She further avered that the Defendant had filed a restriction against the title restricting all dealing on the land and the Defendant had on the 10th of May, 2004 entered into the suit land and cut some trees and started erecting structures thereon.

In his replying affidavit, the Defendant/respondent stated that the Plaintiff was registered as the proprietor of the suit land in trust for himself and the entire family, saying that the Plaintiff was his wife, having married her in 1953. He stated that he gave to the Plaintiff Ksh.5000/= in 1966 so as to pay the same as a deposit for the land to the Settlement Fund Trustee that she was to pay the money on his behalf. He said that at the time he was working for Longman Kenya Limited while the Plaintiff was not working and had no source of income and could not have raised that sum. He further stated that he financed the development of the farm as the Plaintiff managed it. The Defendant married a second wife in 1971 and she stays in his Nyeri land but he stated that he continued to educate the children of his first wife. He stated that the trouble regarding the suit land started in the year 2002 when he told the Plaintiff that he intended to share out the land between his two houses which idea did not go well with the Plaintiff and her children who started ridiculing and insulting him whenever he was in the suit land and therefore he decided to put up a separate house for himself where he lives todate with one of his sons. He further deponed that this dispute had been arbitrated as twice in the presence and participation of the Plaintiff and her children and it had been ruled that the suit land and the Nyeri land be sub-divided and shared between the two families.

I have carefully considered all the pleadings and affidavits filed by the parties herein as well as the submissions made by counsel herein. It is not in dispute that the Plaintiff is the registered proprietor of the suit premises since 23rd November, 1993. However, from the evidence adduced by the Defendant there is every indication that he is the one who raised the initial deposit of Ksh.5000/= and gave it to the Plaintiff

to go and pay to the Settlement Fund Trustee towards purchase of the suit premises. There is also evidence to suggest that sales of the farm produce were used to repay the loan advanced by the Settlement Fund Trustee. These are factors that lend evidence to the Defendant's contention that Plaintiff is registered as the owner of the suit premises in trust for the Defendant and his family.

During the hearing of the dispute over the land held on 25th September, 2002 before a panel of elders, the Plaintiff is quoted as having stated;-

“I agree with my husband that he married me in 1953.

I was sent to Nyandarua by my husband To buy a shamba. The proceeds came From the husband (Complainant). Later On I transferred to the shamba and left The husband at Nyeri.”

There is also evidence that the Defendant entered the suit premises sometimes in the year 2002 but not shortly before this application was filed in May, 2004.

The Principles for granting of injunctions are well known and they were clearly stated in the celebrated decision of **GUELLA VS CASSMAN BROWN & CO. LTD [1973] E. A. 358.**

In light of the above admission by the Plaintiff, I hold that she has not established a Prima Facie case with a likelihood of success and therefore does not merit grant of the injunction orders as sought. I therefore dismiss the Plaintiff's application with costs.

DATED, SIGNED AND DELIVERED at Nakuru this 25th day of November, 2004.

D. K. MUSINGA

JUDGE

25/11/2004