



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

**Civil Suit 417 of 2004**

**DAMARIS NJOKI KARIOKI**

**KENNEDY MUTHANJI KIMATA (suing as the Legal**

**Representatives of**

**ERNEST KARIOKI MURAGE (DECEASED)) ..... PLAINTIFF /APPLICANTS**

**-VERSUS-**

**JOSEPH KAMAU NJENGA.....DEFENDANT/RESPONDENT**

**R U L I N G**

In the Amended Chamber Summons application dated and filed on the 11<sup>th</sup> May 2004, expressed to have been brought under the provisions of order 39 rules 1, 2, 3 and 9 of the Civil Procedure Rules, the Plaintiffs/Applicants seek a temporary injunction restraining the Defendant/Respondent, *inter alia*, from entering into, remaining upon, selling or otherwise dealing with the suit property namely, Land Reference Number 1556/238 or any portion thereof pending the hearing and determination of the suit.

The application is based on the four grounds set out therein supported by the affidavit of the First Plaintiff/Applicant, Damaris Njoki Karioki also made on the 11<sup>th</sup> May 2004.

The application is opposed upon the grounds dated on the 18<sup>th</sup> May 2004 and filed on the 19<sup>th</sup> May 2004, the Replying Affidavits of the Defendant/Respondent, Joseph Kamau Njenga, made on the 18<sup>th</sup> May 2004 and the 4<sup>th</sup> June 2004 respectively.

It is not in dispute that the Applicants are the personal representatives of Ernest Karioki Murage (deceased), the Grant of Letters of Administration Intestate having been confirmed by this court on the 28<sup>th</sup> July 2004. It is also not in dispute that the deceased, though not the registered proprietor of the suit property, had prior to his death entered into an agreement for the sale of the same to him from one Elizabeth Nduta Njonjo and one Andrew Mungai and further that the deceased had appointed the Respondent to sell portions of the suit property on his behalf. The deceased having died before acquiring title to the suit property, the Applicants claim title thereto as his personal representatives.

In his submissions at the hearing of the application and as deponed to in the said supporting affidavit of the First Applicant, Mr. P, Kamau Njuguna, learned counsel for the Applicants, contended that the Respondent having failed to procure prospective purchasers of portions of the suit property pursuant to the deceased's written authority dated the 11<sup>th</sup> November 2000, the deceased by letter dated the 10<sup>th</sup> February 2001 revoked such authority.

Further, and as deponed to in paragraph 12 of the supporting affidavit, Mr. Njuguna contended that the Respondent had failed to fulfill his obligations under an agreement with the First Applicant dated the 11<sup>th</sup> December 2002 and continues in default. It was therefore urged on behalf of the Applicants that as the Respondent had not been able to perform under the terms of the said contract, and in the circumstances deponed to in the supporting affidavit aforesaid, the Applicants are entitled to the orders sought. In any

event, and as the consent of the relevant Land Control Board under the provisions of the Land Control Act [Cap. 302] has not been obtained in relation to any of the claims purported to be made by the Respondent to the suit property or any portion thereof, any and all such claims must fail as they are null and void for all purposes under the Act as are any and all sales purported to have been made by the Respondent.

In reply, and relying on the grounds and the affidavits of the Respondent aforesaid, Mr, Gachiengo Gitau, learned counsel for the Respondent, contended that the Applicants' application must fail as no evidence whatsoever of the alleged purchase of the suit property by the deceased from Elizabeth Nduta Njonjo and Andrew Mungai had been adduced, Further, learned counsel contended that the suit property had not been clearly identified and further that the alleged sale to the deceased was in any event void for want of consent of the Land Control Board. Learned counsel contended further that the First Applicant in particular had meddled with the estate of the deceased in contravention of section 45 of the Law of Succession Act and could not in light thereof obtain the equitable remedies sought, Finally, and notwithstanding what is deposed to in paragraph 9 of the Replying Affidavit made on the 18<sup>th</sup> May 2004, the Respondent, through his learned counsel, disowned the documents annexed to and exhibited as "**DNK 4 and 5**" in the supporting affidavit.

I have considered the application in light of the submissions of both learned counsel. I am satisfied that on the material before me, the Applicants have shown that they have a *prima facie* case for the granting of the orders sought.

Accordingly, the Amended Chamber Summons application dated and filed on the 11 May 2004 is allowed and it is ordered that prayer 2 thereof be and is hereby granted and further that the costs of the application be and are hereby awarded to the Plaintiffs/Applicants.

Dated and delivered at Nairobi this 3<sup>rd</sup> day of December 2004.

P. Kihara Kariuki

Ag. Judge