

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. E131 OF 2020

BILITA WAMBUI KIARIE.....PLAINTIFF

VERSUS

EMBAKASI RANCHING COMPANY LTD.....DEFENDANT

RULING

The application for determination by this court is dated 15/09/2020 was filed by the Plaintiff under certificate of urgency. The court directed the Plaintiff to serve the application upon the Defendant. The court is satisfied that the Defendant was served but it failed to file a reply.

The Plaintiff sought an order of injunction to restrain the Defendant, its employees, servants, agents or beneficiaries from selling, transferring, alienating, developing or otherwise dealing with the property known as land reference number (L.R. No.) 10904/2 with regards to plots numbers 150/8696 and 150/8697 pending hearing and determination of the suit. She also sought an order directing that the original mother title L.R. No. 10904/2 with regards to plot numbers 150/8696 and 150/8697 respectively which was in the custody of the Defendant be deposited in court pending hearing and determination of this suit.

The application was based on grounds set out on the face of the application and was supported by the Plaintiff's affidavit sworn on 15/09/2020. She averred that she entered into an agreement dated 28/11/1982 for the purchase of a parcel of land to be excised from the land situated in the farm off Komarock Road covering L.R No. 10904/2 from the Defendant for a consideration of Kshs. 500/= per share as survey fee and Kshs.3500/= per share civil engineering fee for title deed purposes. She annexed a copy of the provisional letter of allocation dated 28/11/1982. She deponed that she paid the total purchase price of Kshs. 8000/= and subsequently paid a further sum of Kshs. 12,000/= to the Defendant on 13/05/1993 being what it referred to as "payment of member's registration and survey fees for bonus plot". She contended that as such, her original allocation was plot No.1019 and No. 1020 and bonus plot allocation No. 1019 and No. 1020-B. She annexed a copy of the receipt issued by the Defendant on 13/05/1993. She further deponed that the Defendant allocated the suit plots to her vide the allocation letter stamped on 21/05/1993 which she annexed together with receipts issued by the Defendant acknowledging payments towards the purchase price. She also annexed receipts for the further payment of Kshs. 2,000/= issued by the Defendant on 24/07/2008 and Kshs. 20,000/= issued by the Defendant on 30/10/2019 for site visit to the plots. She deponed that she was listed as a member for issuance of lease for Embakasi Ranching Company Limited (Block 105) and that the list was accessible from the Government of Kenya Ministry of Lands portal. She annexed a copy of the list. She deponed that 38 years after she had paid the purchase price for the suit plots, the Defendant was in clear breach of the agreement and had neglected or refused to issue her documents of ownership over the suit land. She deponed further that she was aware that the Defendant had processed title documents for other purchasers some of whom purchased plots long after herself while her efforts to have the suit property transferred to her was ignored despite supplying the Defendant with her documents of ownership, and the fact that those documents had never been contested by any party including the Defendant. She was apprehensive that the refusal to issue title documents to her was a calculated move by the Defendant to deny her rightful ownership of the suit land yet she had invested substantial sums of money, time and effort in having the plots fenced and developed by erecting permanent house structures on the land which were generating an income for her. She urged that if the orders sought were not granted, the suit would be rendered nugatory and she stood to suffer irreparable loss since the Defendant may sell, transfer or interfere with the Suit Property.

The court has considered the application. The issue for determination is whether the Plaintiff is entitled to an order of injunction and the other orders she sought in the application dated 15/9/2020. The principles for the grant of interlocutory injunctions are set out in the case of **Giella v Cassman Brown Company Ltd 1973] EA 358**. In order to grant an injunction, the court must be satisfied that Plaintiff has established a prima facie case with probability of success and he stands to suffer irreparable loss which would not be compensated by an award of damages. If the court is in doubt, the application will be determined on a balance of convenience.

The Plaintiff has established a prima case against the Defendant based on the evidence annexed in her affidavit sworn on 15/09/2020. Her attempts to procure proprietorship of the suit plots that she bought from the Defendant have been frustrated for many years. She has also established that damages would not be adequate compensation since she has substantially developed the Suit Property.

To preserve the suit property until the dispute in court is heard and determined, the Plaintiff is granted a temporary injunction restraining dealings with the Suit Property. The court declines to grant prayer 4 of the application. The Plaintiff is awarded the costs of the application.

DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF MARCH 2021.

K.BOR

JUDGE

In the presence of:-

Mr. Yuvinalis Nyachio for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendant