



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC SUIT NO 209 OF 2018

REBECCA DOLA MIGUDA.....PLAINTIFF

=VERSUS=

MUNYAO KIOKO MANGELI

ALI MULWA MANGELI

(being the Personal Representatives of

the estate of the Dr.KIOKO MANGELI(DECEASED).....DEFENDANTS

RULING

1. This is a Ruling in respect of a Notice of Motion dated 2nd February 2021 which seeks the following orders:

a) Spent

b) Spent

c) The Honourable court be pleased to grant a temporary injunction restraining the Plaintiff/Respondent, her agents, servants or any other person from selling, disposing off, removing, wasting and or alienating all those parcels of land kwon as LR No.12778/156 and LR No.12778/157, including the structures erected in LR No12778/156 and LR No.12778/157 pending the hearing and determination of this suit.

d) The cost of the Application be provided for.

2. The Applicants are the administrators of the estate of the late Dr Kioiko Mangeli who was married to the Respondent. The deceased and the Respondent were married but they divorced on 1st July 2014. Prior to the divorce between the Deceased and the Respondent, the two had jointly purchased LR Nos.12778/156 and LR No. 12778/157. The two properties were however registered in the names of the Respondent.

3. Soon after the divorce, the Respondent filed an originating summons in the Environment and Land Court under Section 17 of the Matrimonial Property Act 2013 in which she sought division of the properties on the ground that she could no longer live together with the deceased after the divorce.

4. The deceased died on 14th March 2019. The Respondent had filed this suit on 30th April 2018 against the Deceased in which she sought to bar the Deceased from occupying or dealing with the two properties. The Respondent contemporaneously filed an application in which she sought injunctive orders against the deceased. As the application was not opposed, the same was allowed.

5. The administrators of the deceased filed an application seeking to set aside the orders which had been granted to the Respondent on the ground that the deceased had not been served. This application was dismissed as the court had been satisfied that there was proper service before the orders were granted.

6. The Applicants now contend that the Respondent has advertised one of the properties for sale and has also put up advertisements for rental of a go down on one of the properties and renting out two residential properties in one of the two properties. The Applicants contend that the two properties were matrimonial properties which were jointly bought by the Deceased and the Respondent and that the registration of the two properties in the name of the Respondent was fraudulent.

7. The Applicants contend that they have a stake in the two properties which were matrimonial properties and that as the properties are in the name of the Respondent, the Respondent is determined to sale one of them and rent out the other properties to the detriment of the beneficiaries of the Deceased.

8. The Respondent opposed the Applicants' application based on a replying affidavit sworn on 2nd March 2021. The Respondent contends that whereas there is need to preserve the two properties, the Applicants have approached the wrong court. The Respondent contends that the Applicants should have filed their application in the Family Division of the High Court and that as the Applicants are seeking to deal with a stake of a deceased person, the law of succession is clear on which court the issues should be addressed.

9. I have carefully considered the Applicants' application as well as the opposition thereto by the Respondent. I have also considered the submissions filed by the parties herein. The only issue for determination is whether the Applicants have demonstrated that they have a prima facie case to warrant issuance of an injunction.

10. The principles for grant of an injunction were long set out in the case of **Giella Vs Cassman Brown & Co. Ltd (1973) EA 358**. First an Applicant has to demonstrate that he has a prima facie case with probability of success. Secondly, an injunction will not be granted if damages will be an adequate remedy. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.

11. A prima facie case was described in the case of **Mrao Vs First American Bank of Kenya Limited & 2 Others (2003) KLR 125** as follows:-

“In civil cases is a case in which, on the material presented to the court, a tribunal properly directing itself concludes that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

12. In the instant case, the Applicants have demonstrated that the two properties were jointly purchased by the Deceased and the Respondent. The Applicants have also demonstrated that the Respondent has advertised one of the properties for sale and others for letting out to third parties. To this extent, the Applicants have demonstrated that they have a prima facie case with probability of success.

13. One of the Applicants is son of the deceased who is alleged to have been evicted based on this court's orders which were issued in 2018. The two properties are prima properties which are at Karen. If they were sold and proceeds used solely by the Respondent who has title, the Applicants' who have a stake in the same will suffer irreparable harm. This is a clear case where an injunction ought to issue. I therefore allow the Applicant's application in terms of prayers (C), and (d) of the Notice of Motion dated 2nd February 2021. Applicants to file a suitable undertaking as to damages within 7 days from today.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 29TH DAY OF APRIL 2021.

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

Mr Nyamweya for Plaintiff/Respondent

Mr Wachira for Mr Marienga for Defendants/Respondents

Court Assistant: Okumu

E.O.OBAGA

JUDGE