



Waithira (Suing as the legal representative of the Estate of Benson Memusi Sondai) v Nasambu & 8 others (Environment & Land Case E057 of 2021) [2023] KEELC 16415 (KLR) (15 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16415 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E057 OF 2021
MN GICHERU, J
MARCH 15, 2023**

BETWEEN

EUNICE SAMATO WAITHIRA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF BENSON MEMUSI SONDAI) PLAINTIFF

AND

ROSE WANJIRU NASAMBU 1ST DEFENDANT
GRACE ONCHWARI 2ND DEFENDANT
WILDRED MOGESA 3RD DEFENDANT
EVANS ONSANSE 4TH DEFENDANT
KUNYOIRIA EVANS 5TH DEFENDANT
SAMUEL KIPTARUAS 6TH DEFENDANT
JOHN GIKENYE 7TH DEFENDANT
THE DISTRICT LAND REGISTRAR 8TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 9TH DEFENDANT

RULING

1. This ruling is on the Notice of Motion dated August 20, 2021. The motion which is brought under Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act*, Orders 40 and 53 of the *Civil Procedure Rules* and all enabling provisions of the law seeks one main prayer namely-
 - i. A temporary injunction to restrain the first to the seventh Defendants whether by themselves, their servants, or agents jointly and severally from selling,



disposing off, transferring and or charging LR Kajiado/Kitengela/22190, 22347, 22348 and 22349 pending the hearing and determination of the suit.

2. The application is supported by fifteen grounds, an affidavit by the Applicant and four annexures. The gist of the above material is that the Plaintiff is the wife of the deceased Benson Memusi who died in the year 2010. Before the deceased died, he did not sell the suit land to the Defendants or any other person. Recently, after conducting a search at the land registry, the Plaintiff found that LR No 22190 which belonged to her deceased husband and which he never sold in his lifetime had been illegally subdivided into LR 22347, 22348 and 22349 and transferred to the first to 7th Defendants by the 8th Defendant. It is for this reason that she filed the current suit and this application.
3. The motion is opposed by the first to 7th Defendants and the first, second, third and fifth Defendants have sworn replying affidavits dated November 21, 2021 in which they depone as follows.
 - i. Firstly, they say they are absolute owners of their respective parcels which they bought from Benson Memusi in the year 2007.
 - ii. Secondly, they obtained title deeds for their parcels lawfully.
 - iii. Finally, the Plaintiff was aware of the sale of the land and it was fully paid for.

Annexed to the affidavits are copies of the title deeds for the land, copies of agreements for the sale of the suit parcels and copies of identity cards for some of the Defendants.

4. Counsel for the parties filed written submissions on April 20, 2022, May 23, 2022 and June 16, 2022. The issues raised in the submissions can be summarized into one issue namely- Does the application dated August 20, 2021 meet the threshold for the grant of an order of injunction?
5. I have carefully considered the application in its entirety including the affidavits, the grounds, the annexures and the case law cited in the written submissions. I find that the application does not meet the required threshold for the following reasons.
6. Firstly, the Plaintiff has not made out a prima facie case with a probability of success. It is merely her word that her husband did not sell the suit land against the Defendants words that they bought the land which words are supported by documents including agreements said to have been signed by her husband in his lifetime. The Plaintiff who has the burden of proof has not adduced evidence to show that the said agreements were not entered into by her late husband.
7. Secondly, the Plaintiff has not proved that she stands to suffer irreparable loss that cannot be adequately compensated by an award of damages.
8. Finally, she has not proved that the balance of convenience tilts in her favour. For the above stated reasons, I find no merit in the application dated August 20, 2021. I dismiss it. Cost in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 15TH DAY OF MARCH, 2023.

M.N. GICHERU
JUDGE

