



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUSIA

CASE NO. E015 OF 2020

MARY NYONGESA WANJALA.....APPLICANT

- VERSUS -

PATRICK OKWARO OGUMBA.....1ST RESPONDENT

FREDRICK BWIRE OKWARO.....2ND RESPONDENT

RULING

1. The Plaintiff filed an application dated 3rd Dec 2020 on the 7th of December and premised on the provisions of order 40 of the Civil Procedure Rules 2020 seeking for orders THAT:

a. Spent.

b. An interim order for injunction do issue restraining the respondents, his agents, kin, servants or any other person acting on his instructions from entering, trespassing, pulling down trees and structures and generally dealing with L.R SAMIA/BUBURI/179 pending interpartes hearing or any further period the court may order; and

c. The costs of the application be provided for.

2. The Application was supported by the affidavit of MARY NYONGESA dated 3rd December, 2020 and the following grounds listed on its face;

a. THAT, the Applicant has been in occupation and used the said plot since 2004;

b. THAT, the Applicant is a purchaser for value from the 2nd Respondent;

c. THAT, the Respondents have a distinct homestead from the Applicant's portion;

d. THAT, it will be in the interest of justice and wont prejudice any party if the orders are granted.

3. The Respondents filed a joint replying affidavit to the application on the 3rd of February, 2021 denying the allegations in the supporting affidavit and stating that they are the registered owners of the suit land. That the Plaintiff's claim that her husband purchased land from the 2nd Defendant is not true because that 2nd Defendant came to own the land in 2020. They denied the Plaintiff's claim that she has been in use of the land for the last 35 years as they (the Respondents) have been in possession of the land;

Further, the 1st Respondent denies the signature on the sale agreement. Finally, the Respondent denied the Plaintiff's averment that her husband had built houses in that parcel of land instead deposing that the 1st Respondent only let the Plaintiff's husband use his building to put in a posho mill on account of their friendship.

4. Parties agreed to canvass the application by way of affidavit evidence and the pleadings on record. For this Court to grant an injunction the Applicant has to demonstrate that: **she has a prima facie case or; if the injunction is not granted she shall suffer irreparable loss** and/or that **the balance of convenience tilts in her favour**. The Applicant has demonstrated that she is in actual possession of the said land although according to the 1st Respondent, the building in which the posho mill is installed belongs to them. The applicant also provided this Court with agreements for sale of the Suit Land between the Applicant's deceased husband and the 1st Respondent and those together with

the fact that all parties confirm that she has had possession.

5. The Applicant went further to provide photographic evidence to show the freshly cut trees on the land. The Respondents have not denied that they are the ones who cut the trees and that they are interfering with the plaintiff's possession thereof. From the evidence presented, the Applicant demonstrates that she has a prima facie case. Further, having shown that she is in possession, the balance of convenience is in her favour. That the issue of ownership of the suit land and/or whether or not the possession of the land because of friendship existing between her deceased husband and the Respondents are issues to be determined during the full trial.

6. Consequently, I safely conclude that the Applicant has made out a good case to warrant the granting an order of temporary injunction restraining the Respondents and their agents from in any manner interfering with her use of L.R Samia/Buburi/179 pending hearing and determination of the suit. The costs of the application is awarded to the Applicant.

DATED, SIGNED & DELIVERED AT BUSIA THIS 8TH DAY OF APRIL, 2021.

A. OMOLLO

JUDGE