



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

ELCC No. E032 OF 2021

PAUL METHU WANJIRU (Suing as the personal representative of the estate of

IAN PATRICK MCDERMOTT (Deceased)).....PLAINTIFF

VERSUS

MATHEW MUNGAI KUNG'U.....1ST DEFENDANT

JOHN MACHARIA MAINA

(Sued as trustee for GRACE WORD POWER CHURCH).....2ND DEFENDANT

MATTHEWS MAINA GITAU.....3RD DEFENDANT

ESTHER WANGARI MWANGI.....4TH DEFENDANT

RULING

1. This ruling is in respect of Notice of Motion dated 8th April 2021 which seeks the following orders:

1. [Spent]

2. [Spent]

3. A temporary injunction restraining the defendants, jointly and severally their servants, agents or any person from claiming interests through the defendants from trespassing, entering into, remaining on, or disposing, leasing or evicting the plaintiff or his agents/servants from or in any way interfering with the suit land PLOT L NAIVASHA MUNICIPALITY pending hearing and determination of this suit.

4. THAT costs be provided for.

2. The application is supported by an affidavit sworn by the plaintiff who stated that he obtained Limited Grant *ad litem* in respect of the estate of Ian Patrick McDermott (deceased) in Nairobi High Court Succession Cause no. E293 of 2021. He deposed further that the deceased is the registered owner of Plot No. L Lakeview Naivasha Municipality. That the deceased bought the suit land in 2003 and built a permanent building where he operated a bar until his death in 2015. That he received information that the 3rd and 4th defendants were conspiring to sell or lease the suit property to the 1st and 2nd defendants. He also deposed that the 1st defendant intends to operate a bar on the suit property while the 2nd defendant has put up church banners. That the respondents have been suspiciously visiting the suit land and that on 5th April 2021, the 1st defendant took a lorry load of ballast to the suit property in preparation for erecting structures on it.

3. The 1st and 2nd defendants did not respond to the application. Counsel appearing for them left it to the court to make a determination. On his part, counsel for the 4th defendant stated that he did not oppose the application. Counsel for the applicant relied on the material on record and urged the court to allow the application.

4. I have considered the application and all the material on record. To the extent that he seeks an interlocutory injunction, the applicant must establish a *prima facie* case with a probability of success. If he fails to do so the application will fail without any further consideration. If he overcomes that first hurdle, he must then demonstrate that damages will not be an adequate compensation to him. If the court is in doubt as to

whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience. That is the well settled test as established in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358** and reiterated in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**.

5. The applicant claims that the deceased is the registered owner of Plot No. L Lakeview Naivasha. To support that contention, he exhibited a document referenced “Transfer of Plot/Kiosk/Market Stall Form”. The copy is not sufficiently legible in some parts. For example, I cannot tell from the title which Municipal Council issued it. The postal address on it suggests that it originates from Naivasha but we cannot make assumptions on such a crucial document. No official stamp of a local authority is affixed on it and it bears no signature of any officer of any local authority. The document suggests that through it, the deceased acquired the suit property from one John Mwangi Njuguna. Although the document provides space for signature of a witness, date of approval of transfer and details of relevant minutes, all these spaces are blank. Further, it is not demonstrated that John Mwangi Njuguna owned the suit property prior to transferring it to the deceased. No letter of allotment or letter of offer and evidence of compliance with the terms thereof are availed. Although the application is unopposed, the applicant must satisfy the court that the deceased owned the suit property. I am not persuaded in that regard.

6. The applicant has approached the court on the basis of Limited Grant *ad litem* in respect of the deceased’s estate. As matters stand now, there is nothing before the court to show that the suit property is part of the deceased’s estate.

7. In view of the foregoing discourse, the applicant has not established a *prima facie* case with a probability of success. That being the case, the application lacks merit. It is dismissed. Since the respondents did not oppose the application, I make no order as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF MAY 2021.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Kamunye Gichigi holding brief for Mr Omollo for the plaintiff/applicant

No appearance for the 1st and 2nd defendants/respondents

No appearance for the 3rd defendant/respondent

No appearance for the 4th defendant/respondent

Court Assistants: B. Jelimo & J. Lotkomo