

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC MISC. APPL. NO. 4 OF 2021

SALOME H. JUNGE.....APPLICANT

VERSUS

MARK KIPLAGAT KENDUIYWA.....RESPONDENT

RULING

The Application

1. The *ex parte* originating summons dated 1/3/2021 and filed in court on 3/3/2021, has been bought under **Sections 27, 28 and 80** of the **Limitation of Action Act** and **Order 51 Rule 1** of the **Civil Procedure Rules**. The applicant seeks the following orders:-

(1) ...spent

(2) That pending the grant of the leave and filing of the intended suit, the *status quo* to be maintained to the effect that the respondent, his servants, agents or anyone whatsoever acting for or on behalf of the respondent from evicting the applicant, cutting any trees or demolishing the applicant on the land parcel known as Sinyerere/Sitatunga Block 3/Taito/85.

(3) That leave be granted to the applicant SALOME H. JUNGE to file a suit against MARK KIPLAGAT KENDUIYWA after an apparent limitation period.

(4) That costs of this application abide the results of the intended suit.

(5) Any other order that the honourable court shall deem fit.

2. The application is supported by the affidavit of the applicant sworn on 1/3/2021. The grounds upon on the face of the application are that: the applicant entered into an agreement for purchase of one acre of land from the respondent from **LR No. Sinyerere/Sitatunga/Block 3/Taito/85** which was registered in the name of **Noah Barngetuny Kenduiywa**; that it was agreed that she takes possession of the land and that she would be included as a beneficiary of the estate of Noah; she was guaranteed quiet possession and enjoyment of the land and she planted **363** trees and commenced construction of a permanent house. However the respondent has started interfering with the suit land by fencing it of and excluding the applicant from any access thereto; he has also ploughed the same. The applicant avers she may loss property worth a colossal sum through the actions of the respondent. The respondent has allegedly applied for confirmation of grant of letters of administration without including the applicant as a beneficiary as agreed. It is intended to file a claim for a permanent injunction and in the alternative compensation from the respondent. It is also averred that the delay in filing the suit was occasioned by ignorance of the applicant regarding the secret filing for confirmation of grant and the misleading frequent oral promises of the respondent that he would transfer the ownership of the land to the applicant. A copy of the land sale agreement executed before an advocate by the parties in this application and dated **13/4/2011** is exhibited. A valuation report dated **27/8/2020** is also exhibited. A valuation report dated **3/9/2020** giving the value of the property at **Kshs. 7,000,000/=** is also exhibited.

3. This is an *ex parte* application. The applicant has given justification for why she never filed suit in respect of the suit land.

4. I therefore grant the *Ex Parte* Originating Summons dated 1/3/2021 as prayed in **Prayer Nos. (2), (3) and (4)** thereof.

Dated, signed and delivered at Kitale via electronic mail on this 5th day of May, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.