



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E025 OF 2021

MIRIAM JEBOR KOMEN.....PLAINTIFF/APPLICANT

=VERSUS=

EZEKIEL KIPKULEI KOMEN.....1ST DEFENDANT/RESPONDENT

CHIEF LAND REGISTRAR.....2ND DEFENANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 25th January 2021 brought under order 40 rules 1, 2, 3 and 4 of the Civil Procedure Rules, section 1A, 3A, 63(e) of the Civil Procedure Act and all other enabling provisions of the law.

2. It seeks orders:-

1. Spent.

2. Spent.

3. That pending the hearing and determination of this suit the honourable court be pleased to issue an interlocutory injunction restraining the defendants either by themselves, their servants and/or agents, or any other person and/or authority from selling, disposing off, encroaching, trespassing, accessing, transferring, entering, alienating or in any other way interfering with property LR NO 14720 (IR No 220258).

4. That OCS Embakasi Nairobi do enforce the order.

5. That the costs of this application be provided for.

3. The grounds are on the face of the application and are set out in paragraphs (a) to (j).

4. The application is supported by the affidavit of Miriam Jebor Komen, the plaintiff/applicant herein sworn on the 25th January 2021 and a supplementary affidavit sworn on the 21st April 2021.

5. The application is opposed. There is a replying affidavit sworn by Ezekiel Kipkulei Komen, the 1st defendant/respondent herein sworn on the 1st April 2021.

6. On the 27th April 2021, the court with the consent of the parties directed that the application be canvassed by way of written submissions. The plaintiff/applicant submissions are dated 12th May 2021. It appears the 1st defendant/respondent did not file any submissions.

7. I have considered the notice of motion, the affidavits in support and the annexures. I have also considered the replying affidavit and the annexures. The issues for determination are:-

(i) Whether the plaintiff's/applicant's application meets the threshold for grant of temporary injunction.

(ii) Who should bear costs of this application?

8. It is the plaintiff's/applicant's case that she is the beneficial owner of the suit property and that the 1st defendant intends to dispose of the same.

9. I am satisfied that the applicant has demonstrated that she stands to suffer irreparable injury if the suit property is disposed of.

10. I also find that she has established a prima facie case with a probability of success at the trial.

11. I find merit in this application and I grant the orders sought namely:-

(a) That a temporary injunction is hereby issued restraining the defendants either by themselves, their servants and/or agents or any other person and/or authority from selling, disposing off, encroaching, trespassing, accessing, transferring, entering, alienating or in any other way interfering with property known as LR NO 14720 (IR NO 220258) Embakasi pending the hearing and determination of this suit.

(b) That the OCS Embakasi does ensure compliance of the orders.

(c) That costs do abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED THROUGH VIRTUAL COURT AT NAIROBI THIS 30TH SEPTEMBER 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the Defendants

Steve - Court Assistant