



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E070 OF 2021

SALOME NJOKI GITAU alias NJOKI W/O SIMON.....PLAINTIFF/APPLICANT

- VERSUS -

MONICAH WANJIRU GITAU.....1ST DEFENDANT/RESPONDENT

DISTRICT LAND REGISTRAR, NAIROBI.....2ND DEFENANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 22nd February 2021 brought under section 1A, 1B, 3A & 63 (e) of the Civil Procedure Act, Order 40 Rules 1-3, order 50 Rule 1 of the Civil Procedure Rules and Articles 35 and 40 of the Constitution.

2. It seeks orders:-

1. Spent.

2. Spent.

3. That pending the hearing and determination of this matter, the Honourable Court be pleased to issue an order of injunction restraining the Defendants whether by themselves, their agents and/or servants from offering for sale, selling, transferring, charging and/or in any manner whatsoever dealing with the parcel of land known as Title Number: Dagoretti/Waithaka/1325.

4. That this honourable court be pleased to order the 2nd Defendant to supply the Plaintiff and/or produce in court the following documents:-

a. A copy of the Green card in respect of Title NO Dagoretti/Waithaka/1325.

b. A copy of the transfer document effecting the transfer of the suit property to the 1st Defendant.

c. A copy of application for Land Control Board Consent in respect to the transfer in (b) above.

d. A copy of the Land Control Board Consent to transfer the suit property to the 1st Defendant.

e. A copy of receipt attesting to payment of stamp duty in respect of transfer of the suit property to 1st Defendant.

5. That costs of this application be provided for.

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

4. There is a supporting affidavit sworn by Salome Njoki Gitau, the Plaintiff/Applicant herein sworn on the 22nd February 2021.

5. The application is opposed. There is a Replying Affidavit sworn by Monica Wanjiru Gitau, the 1st Defendant herein sworn on the 22nd April 2021.

6. On the 19th April 2021, the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.

7. I have considered the notice of motion, the supporting affidavit and the annexures. I have also considered the replying affidavit and the annexures. I have considered the written submissions filed on behalf of the parties. 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. In an application for injunction, the onus is on the applicant to satisfy the court that it should grant an injunction. The principles were laid down in the precedent setting case of **Giella vs Cassman Brown & Co. Ltd (1973) EA 358**. In the case of **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others (2013) KLR 125** the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

9. It is the Plaintiff's case that the 1st Defendant has been registered as the owner of LR NO Dagorett/Waithaka/1325. Most of the issues raised by the Plaintiff/Applicant will be addressed at the hearing where the evidence will be tendered.

10. I find that the Plaintiff has failed to demonstrate that she will suffer irreparable injury if these orders are not granted.

11. In conclusion, I find no merit in this application and the same is dismissed. the costs do abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 14TH DAY OF OCTOBER 2021

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Gitau for the Plaintiff

Ms Muchira for the 1st Defendant

No appearance for the 2nd Defendant

Steve - Court Assistant