



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**LAND CASE NO. E14 OF 2021**

**GRACE WANJIKU KIARIE (Suing on behalf of Lucy Wangari**

**Njenga the legal representative of the estate of the late**

**AMOS NJENGA GIKONYO) .....PLAINTIFF**

**VERSUS**

**LAND REGISTRAR NAKURU & 4 OTHERS.....DEFENDANTS**

**RULING**

1. The Plaintiff's Notice of Motion dated 9<sup>th</sup> February 2021 seeks the following orders:

**1. Spent.**

**2. That a temporary injunction do issue restraining the Defendants/Respondents by themselves, their servants, employees, workmen, agents, heirs, personal representatives or otherwise howsoever from selling, leasing, charging, pledging, offering the Title thereof as lien or any form of security, evicting, demolishing, conveyance, transfer, arbitrary registration or in any other manner interfering with the Plaintiff/Applicant's right as a rightful beneficiary of that Property known as Title Number MITI MINGI/MBARUK BLOCK 5/76 (KIUNGURURIA), pending the inter-parties hearing of this Application.**

**3. That a temporary injunction do issue restraining the Defendants/Respondents by themselves, their servants, employees, workmen, agents, heirs, personal representatives or otherwise howsoever from selling, leasing, charging, pledging, offering the Title thereof as lien or any form of security, evicting, demolishing, conveyance, transfer, arbitrary registration or in any other manner interfering with the Plaintiff/Applicant's right as a rightful beneficiary of that Property known as Title Number MITI MINGI/MBARUK BLOCK 5/76 (KIUNGURURIA), Nairobi pending the hearing and determination of this suit.**

**4. That costs of this Application be provided for.**

**5. Any other further relief that this honourable court may deem fit and just to grant.**

2. The plaintiff's application is premised on the grounds that are set out at the foot thereof and in the supporting affidavit sworn by the plaintiff on 19/2/2021. They are that the late **Amos Njenga Gikonyo** died on 22/12/2005 and that though there have not been any legally binding agreements between the estate of the deceased and the defendants the defendants have taken to activities that threaten to deprive the estate of its right to property as enshrined in the **Constitution** which activities would harm the beneficiaries if not checked by an order of this court. The defendants are said to be planning to subdivide the suit property.

3. It is stated that the 3<sup>rd</sup> defendant allegedly entered into an agreement with the late Amos Njenga Gikonyo on **24<sup>th</sup> January 2008**; that the 3<sup>rd</sup> defendant fraudulently transferred the suit property to the 4<sup>th</sup> defendant who sold it to the 5<sup>th</sup> defendant. The 5<sup>th</sup> defendant is said to be already selling portions of the suit property. The plaintiff claims that the titles successively held by the 3<sup>rd</sup> - 5<sup>th</sup> defendants were fraudulently acquired.

4. The 4<sup>th</sup> defendant filed its response through the sworn affidavit of one **Julie Wanjiru Nyaga**. It stated that it purchased the suit land from the 3<sup>rd</sup> defendant after due diligence and it paid the full purchase price and obtained title to the land. The 4<sup>th</sup> defendant however took possession of the suit land upon execution of the agreements and before title was transferred to it. Subsequently the 4<sup>th</sup> defendant sold the suit land to the 5<sup>th</sup> defendant. The 4<sup>th</sup> defendant avers that the plaintiff is not the administrator to the estate of the late Amos Njenga Gikonyo and that the entire suit is time barred.

5. The 5<sup>th</sup> defendant filed its response in a sworn affidavit of **Fr Bernard Ngaruiya** stated that it purchased the suit land from the 4<sup>th</sup> defendant for valuable consideration without notice of any irregularity and without any fraud after conducting due diligence efforts which confirmed the 4<sup>th</sup> defendant as the proprietor thereof. According to it a letter of consent was obtained for the transaction and that subsequently the 5<sup>th</sup> defendant subdivided the land and sold it to third parties and is no longer in control of the same.

6. The main issue that arises in the present application is whether the plaintiff deserves the orders of temporary injunction she seeks. The appropriate way to determine that is to inquire as to whether she has satisfied the conditions for a grant of a temporary injunction as set out in the celebrated case of **Giella Vs Cassman Brown 1973 EA 358**.

7. The conditions are basically that the plaintiff has to establish a *prima facie* case and that she would suffer loss that would not be capable of redress by way of damages if the orders sought are not granted. Further if the court is in doubt regarding the satisfaction of the foregoing conditions it will rule on a balance of convenience.

8. The plaintiff has stated that she took out a grant of letters of administration to the deceased's estate in the year **2006** and by then the deceased was the registered sole owner of the suit land. Soon thereafter the plaintiff learnt that the 3<sup>rd</sup> defendant had arbitrarily entered the suit land alleging purchase from the deceased vide an agreement dated **24/1/2008**. Later she conducted a search and found that the suit land had been transferred to the 3<sup>rd</sup> defendant and placed a caution thereon and continued seeking the assistance of land officials and other offices in vain hence the suit. She states that the 5<sup>th</sup> defendant is in the process of subdividing the suit property and disposing of portions thereof.

9. I have examined the documentation in this matter and in order not to prejudice the trial of the main suit by any further discussion I will simply state that I have found that the plaintiff has established a *prima facie* case with probability of success.

10. Regarding loss, I find that the plaintiff has not established that she may suffer loss that can not be compensated for by way of damages if the orders sought are not granted. Consequently this court has to resort to the balance of convenience test and I find that the balance of convenience lies in the preservation of the suit land pending the hearing and determination of the suit.

11. The 5<sup>th</sup> defendant has merely averred without proof that it has sold portions of the suit land to third parties. The portions borne by the subdivision according to the mutation whose copy is exhibited in the response have been allocated **parcel numbers 3324 – 3388** (inclusive.) This court is not told who the purchasers of those parcels are. In this court's view a temporary injunction is necessary in order to restrain the disposal or the further disposal of the said plots which would further complicate this suit and draw in more parties.

12. The upshot of the foregoing is that I find that the application dated **9/2/2021** has merit and the same is hereby allowed and I issue the following orders:

**a. A temporary injunction is hereby issued restraining the Defendants/Respondents by themselves, their servants, employees, workmen, agents, heirs, personal representatives or otherwise howsoever from selling, leasing, charging, pledging, offering the Title thereof as lien or any form of security, conveyance, transfer, arbitrary registration or in any other manner disposing of any of the subdivisions of that Property known as Title Number MITI MINGI/MBARUK BLOCK 5/76 (KIUNGURURIA) being Land parcel numbers MITI MINGI/MBARUK BLOCK 5/3324 – 3388 (inclusive) pending the hearing and determination of this suit.**

**b. That costs of this Application shall be in the cause.**

13. The parties shall comply with the rules by filing and serving copies of all requisite documents in support of their respective cases and they shall appear before court for a mention on **26<sup>th</sup> January 2022** for the fixing of a hearing date for the main suit.

**DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 17TH DAY OF NOVEMBER, 2021.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**