



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NO.E084 OF 2021

MNG1ST PLAINTIFF

JWM.....2ND PLAINTIFF

KWM.....3RD PLAINTIFF

(Suing as next friend of PW)

- VERSUS -

CHRISTINE MARTHA MWANGI.....1ST DEFENDANT

JANE WAITHERA GATHUNGU.....2ND DEFENDANT

THE LAND REGISTRAR, NAIROBI.....3RD DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 25th February 2021 in which the Applicants seek the following orders: -

1. This Application be certified as urgent and heard ex-parte in the first instance.

2. That the 1st and 2nd Defendants/respondents by themselves, their agents and/or Servants or anyone who may be acting under their instructions be and are hereby restrained by an order of this Honourable court from doing any further transfer, sales, leasing, construction, cultivating or any other activities on the land parcel originally Dagoretti/Waithaka/ (particulars withheld) and now subdivided to nos. (particulars withheld) pending the hearing and determination of this Application.

3. That the 1, 2 and 3rd Defendants/respondents by themselves, their agents and/or Servants or anyone who may be acting under their instructions be and are hereby restrained by an order of this Honourable court from doing any further transfer, sales, leasing, construction, cultivating or any other activities on the land parcel originally Dagoretti/Waithaka (particulars withheld) and now subdivided to nos.(particulars withheld) pending the hearing and determination of this suit.

4. The Land Registrar Nairobi be directed to register a caution on the said parcels of land pending the hearing and determination of this Application.

5. The costs of this application be provided for.

6. Any orders that the court may deem fit and just to grant

2. The Applicants and the 1st and 2nd Defendants are daughters of PW who is said to be of unsound mind. The Applicants are bringing this application as next of friends of PW. PW is the registered owner of Dagoretti/Waithaka/ (particulars withheld). The Applicants contend that Dagoretti/Waithaka/ (particulars withheld) has since been illegally subdivided into Nos. Dagoretti/Waithaka/ (particulars withheld). One of the subdivisions has been registered in the name of the 1st Respondent and the other in the name of the 2nd Respondent.

3. The Applicants further contend that the 1st and 2nd Respondents are in the process of having a third subdivision registered in the name of

the 2nd Respondent who resides in Canada. The Applicants contend that PW is suffering from senile dementia and did not consent to the subdivisions which were carried out by the 1st Respondent who was by then residing with PW.

4. It is on this basis that the Applicants want the orders as specified in paragraph 1 granted. They contend that some of the subdivisions have been registered in the name of PW.

5. The Respondents who were duly served with the application did not file any grounds of opposition or replying affidavit. The Applicants filed written submissions.

6. I have carefully considered the Applicants' application as well as the submissions. In the supporting affidavit, the Applicants have annexed a copy of a medical report by Dr R P Lubanga which shows that PW is suffering from senile dementia. If this be the case, then this suit should have been brought by guardian ad litem duly appointed by the court to do so. In the instant case, there is no evidence that the Applicants have been appointed as guardian ad litem of PW.

7. From the suit filed herein, it is clear that the Applicants have interest in the land held by PW. This being the case, they cannot purport to act as next friends of PW or guardian ad litem of PW as their interest will be adverse to that of PW.

8. In the absence of any evidence, that the Applicants have been appointed as guardian ad litem of PW , I find that the suit herein as well as the application are incompetent . The suit as well as the application are hereby struck out with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 11TH DAY OF NOVEMBER, 2021

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

M/s Ogati for Applicant

Court Assistant: Mercy

E.O.OBAGA

JUDGE