



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 23 OF 2018

RACHAEL WANJIKU TONU.....PLAINTIFF

VERSUS

ENES SHITACHI WEKESA.....1ST DEFENDANT

AGNES NAFULA WAFULA.....2ND DEFENDANT

FRANKLINE WAFULA.....3RD DEFENDANT

WILLIAM WEKESA MUCHELE.....4TH DEFENDANT

MAURICE WANJALA WEKESA.....5TH DEFENDANT

JOHN WEKESA WABUKE.....6TH DEFENDANT

RULING

1. The application dated 15/11/2019 which was filed in court on the same date has been brought by the defendants. It seeks the following orders:-

(1) ...spent

(2) ...spent

(3) That an order of injunction be issued restraining the plaintiff, her agents, her servants and all persons claiming through her from selling, leasing, charging, transferring, alienating and/or interfering in any way with the defendants' enjoyment of the land comprised in land title number TRANS NZOIA/GIDEA/71 pending the hearing and determination of this suit.

(4) That the costs of this application be in the cause.

2. The applicant has brought the application under Sections 3A and 63(c) of the Civil Procedure Act, Order 40 Rules 1 and 4 and Order 51 Rule 1 of the Civil Procedure Rules (2010).

3. The grounds upon which the application is made are that the suit land was allocated to Jackson Wekesa Nasmisiko (now deceased) by the Settlement Fund Trustees in 1983; that he died before obtaining the title to the same; that the defendants are beneficiaries of his estate who have been on the suit land for over 35 years and it is their only place they call home; that the plaintiffs title was obtained in the year 2012 and the defendants are apprehensive that she may dispose of the suit land.

4. The application is supported by an affidavit of William Wekesa Muchele, 4th defendant, sworn on his own behalf and on behalf of his co-applicants dated 15/11/2019 amplifying the above grounds.

5. In reply to the application the plaintiff filed a replying affidavit sworn on 3/12/2019. In that affidavit the deponent depones that the land was registered in her name through transmission in a Certificate of Confirmation of Grant in Kericho Succession cause No. 12 of 1999 in the matter of Estate of the late Robert Kipkoech Kirui; that she is not intent of disposing the suit land but nevertheless the defendants have not demonstrated that they deserve any conservatory orders; that the defendants have not occupied the suit land since 1983 and that the local administration warned the defendants to vacate the suit land in 2002 and her claim is recognized by the District Settlement Office Trans-Nzoia.

6. The defendants filed their submissions on **19/12/2019** while the plaintiff filed her submissions on **3/2/2020**.

7. I have considered the application and the response.

8. The conditions for the grant of an order of temporary injunction were laid down as follows: in the celebrated case of **Giella -vs- Cassman Brown [1973] EA 358**, the applicant must demonstrate the existence of a prima facie case and secondly, the applicant must demonstrate that he stands to suffer loss that cannot be compensated by way of damages; thirdly, if the court is in doubt then it should rule on a balance of convenience.

9. In the **Mrao Ltd -vs- First American Bank of Kenya & 2 others 2003 KLR 125**, the court observed as follows while dealing with the definition of a *prima facie* case:

“In civil cases, a *prima facie* case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A *prima facie* case is more than an arguable case”.

10. Has the applicant established that he has a prima facie case?

11. The defendants claim to be in possession of the suit land. I have no reason to doubt this. Evidence, and the plaintiff’s prayer for eviction suggests that they are. However the plaintiff holds the title to the suit land in her name. It was issued in the year **2012**. That notwithstanding it is clear that the dispute dates back to the **1980s** when the plaintiff’s husband acquired the land and sought the eviction of illegal occupants living thereon. The letter dated **18/8/1987** does not mention the names of those illegal occupants.

12. In my view this is a case in which the defendants have not established the two conditions for the grant of an injunction set out in the **Giella -vs- Cassman Brown 1973 EA 358**. However since the defendants appear to be in occupation of the suit land it is proper to rule on a balance of convenience by ordering that the *status quo* be maintained pending the hearing and determination of the suit which shall be expedited.

13. I therefore issue the following orders:-

(a) **The current *status quo* on the suit land shall be maintained.**

(b) **This suit shall be fixed for hearing on a priority basis.**

(c) **Mention of the suit shall be on 10/3/2020 to confirm compliance and to issue a hearing date.**

(d) **Costs shall be in the cause.**

Dated, signed and delivered at Kitale on this 25th day of February, 2020.

MWANGI NJOROGE

JUDGE

25/2/2020

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for applicant

N/A for respondents

COURT

Ruling delivered in open court.

MWANGI NJOROGE

JUDGE

25/2/2020