



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**LAND AND ENVIRONMENT SUIT NO 23 OF 2017**

**NANCY KATHURE KABURU.....PLAINTIFF**

**VERSUS**

**ERASTUS MURWITHANIA.....1ST DEFENDANT**

**ERIC MWENDA .....2ND DEFENDANT**

**RULING**

1. This Notice of Motion dated 30th January, 2017 seeks the following orders:-

(1) Spent.

(2) An order of inhibition be made prohibiting any dealings either by way of transfer registrations, chargers or otherwise over the suit plots herein suits plots No. **138 “B” Nkubu (“NKUENE/TAITA/ PLOT NO 138B”)** and **PLOT NO. 199 (“NKUENE/TAITA/PLOT NO. 199”)** situated within Nkubu Township pending hearing and determination of the application and the main suit.

3. An Order of temporary injunction be made restraining the defendant/respondents, their agents, servants and representative from selling, transferring, leasing, charging and or in any other way whatsoever interfering with the suits plots **No. 138 “B” Nkubu ( NKUENE/TAITA/ PLOT NO 138B”)** and **PLOT NO. 199 (“NKUENE /TAITA/PLOT NO.199”)** situated within Nkubu Township pending hearing and determination of the application interpartes.

4. An Order of temporary injunction be made restraining the defendants/respondents, their agents, servants and representatives from selling, transferring, leasing, charging and or in any other way whatsoever interfering with the suits plots No. **138 “B” Nkubu** also referred to as “**NKUENE/TAITA/PLOT NO 138B”** and **PLOT NO. 199** also referred to as “**NKUENE/TAITA/PLOT NO. 199”** situated within Nkubu market pending hearing and determination of the main suit.

5.Costs of the application for.

2. The grounds in support of the application are:-

a) The respondent is at the verge of selling and transferring the suit plots to unsuspecting third parties and which action if not restrained will put the Plaintiff/Applicant and her family to prejudice and irreparable loss and damage.

b) The Plaintiff/applicant who is daughter in law to the 1st defendant/respondent is in possession of

the suit plot, where she carries retail business and wholesale business.

c) The applicant possesses a prima facie case which stands to be rendered useless if the orders sought herein are not granted.

d) It is in the interest of justice that the Orders sought be granted.

Applicant has also filed a Supporting Affidavit where she has deponed as follows:-

(1) **THAT** I am the Plaintiff/applicant herein competent to swear this affidavit.

(2) **THAT** the 1st defendant/respondent is my father in law by virtue of being the biological father of my late husband one Charles Kaburu who passed on in the year 2014 while the 2nd defendant is my cousin.

(3) **THAT** the 1st defendant has all along held suit No. 138”B” Nkubu (“NKUENE/TAITA/ PLOT NO 138B”) while plot No. 199 Nkubu (“NKUENE/TAITA/PLOT NO. 199”) has been held by both 1st and 2nd defendants situate within Nkubu Market in trust for themselves and my family as a whole.

(4) **THAT** the defendants/respondent had put me and my late husband in peaceful and exclusive possession of the two suits plots and allowed us to operate retail and wholesale business thereon. I have been in occupation thereof for over two decades.

(5) **THAT** for the period I have been in occupation of the suit plots I have heavily invested thereon by interlia developing and refurbishing the development thereon . Annexed and Marked “NKI” is a copy of my business permit confirming the same.

(6) **THAT** my late husband and myself have all along been the ones paying the rates and ground rent for the suits plots though in the defendants name as shown from the receipts annexed hereto as “NK2”.

(7) **THAT** however, following the death of my husband the defendants/respondents have now threatened to evict me and my children from the suits plots on the ground that I am no longer one of their own.

(8) **THAT** the defendants/respondents have further threatened to sell off the suits plots to unsuspecting third parties and which action will prejudice my rights thereto.

(9) **THAT** I am currently operating retail and wholesale business on the suits plots and I stand to suffer irreparable loss if evicted there- from given all the resources I have put into the said businesses over the years.

(10) **THAT** I plead with the Honourable Court to grant the Orders sought in my application brought herewith for the purpose of the plots and in the interest of justice.

4. The Respondents/Defendants were apparently served going by the R/S filed in Court on 15.02.17. The said Respondents however did not appear in court on 15/2/2017. The application is hence unopposed.

Nevertheless, the Court has to determine if the application has merits or not.

Under paragraph 3 of the Plaint, applicant avers that the 1st defendant (her father in law) is the registered owner of plot No. 138 “B” while both defendants are the registered owners of plot No. 199, both located in Nkubu market.

Applicant further states that she is the one who is in lawful occupation of the said plots.

In view of that scenario, the applicant ought to be vigilant in ensuring that the matter is heard speedily.

In the circumstances the Court grants prayer 2 and 4 in the application of 31.01.17 for a period of **6 (SIX) MONTHS ONLY.**

Applicant is to ensure that summons to enter appearance are served and that she takes action to have pre trial directions taken after close of pleadings.

**DELIVERED IN OPEN COURT AT MERU THIS 3RD DAY OF MARCH, 2017 IN THE PRESENCE OF:-**

CA: Kananu

Mutungu h/b for Ndubi for Plaintiff

Defendant absent

**L.N. MBUGUA**

**JUDGE**