



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAJIADO
LAND AND ENVIRONMENT DIVISION
CIVIL CASE NO. 547 OF 2017

LOIS WAMBUI THUO.....PLAINTIFF

VERSUS

MOSES MUTUNKEI MONIREI.....DEFENDANT

RULING

The application before this court is dated the 17th March, 2017 brought pursuant to Section, 3 and 3A of the Civil Procedure Act, Order 40 and 50 of the Civil Procedure Rules and all the enabling provisions of the law.

The Applicant is seeking for the following prayers:

1. spent .
2. **That** pending the hearing and determination of the application or further orders of the court, the Honourable court be pleased to issue an interlocutory order of injunction restraining the Defendant either by himself and/or through his agents, assignees or any of them from trespassing or alienating, disposing or carrying out any other developments or interfering in any manner whatsoever with the suit property known as KAJIADO/OLCHORO-ONYORE/5580 measuring the approximate are of 4.8 hectares.
3. **That** the OCS, Kiserian Police Post do supervise the compliance and execution of this Honourable Court's orders.
4. **That** costs of the applicant be in the cause.
5. Any other further orders this honourable court may deem fit and just to grant.

The application is premised on several grounds and is supported by the affidavit of LOIS WAMBUI THUO who is the plaintiff/ applicant herein. She avers that the Defendant is the beneficiary to the estate of the late PAUL PARKINITI MONIREI who is the registered proprietor of all that piece of land known as KAJIADO/OLCHORO - ONYORE/5580(suit property). That petition for letters of administration was done and Grant of Letters of Administration issued. She states that on 8th December, 2010 she entered into a sale agreement with the Defendant to purchase four (4) acres of land at Kshs. 2, 400, 000 where upon execution of the sale agreement she paid a sum of Kshs. 320,000 as deposit of the purchase price and agreed that the balance of the purchase price amounting to Kshs. 2, 080,000 was to be settled in 90 days. She further avers that the said balance of the purchase price was later settled as evidenced by the

acknowledgment receipts annexed to her supporting affidavit. The Plaintiff also states that on 13th September, 2011 she entered into another sale agreement with the Defendant to purchase a further seven (7) acres of land for Kshs 4, 550,000, where upon execution of the fresh sale agreement, she paid the Defendant Kshs. 1, 100, 000 being deposit for the purchase price and agreed that the remaining balance of Kshs. 3, 450,000 was to be settled within 90 days. She further avers that on diverse dates she paid the Defendant through the bank and in cash, the total of the purchase price. She states that on several occasions, she has requested the Defendant to transfer to her the total eleven (11) acres in Land Parcel Number KAJIADO/OLCHORO - ONYORE/ 5580 but all her efforts have been futile. Further, that on 28th October, 2016 and 15th March, 2017 respectively, she did a search at the NGONG Land Registry to ascertain the status of the suit parcel and discovered several people had registered cautions claiming purchasers' interest over the said land. She states that the Defendant has been misleading her that there was a case lodged by a family member over the suit parcel of land but the same was determined. The Plaintiff is apprehensive that she might suffer irreparable loss and damage since all her efforts to get the land she purchased from the Defendant was being frustrated.

The Court notes that as per the affidavit of service, the Defendant was duly served with the application but failed to enter an appearance nor file a replying affidavit. The application hence proceeded unopposed.

Mr. Obare who was Counsel for the Plaintiff/Applicant stated that he was only seeking prayers No. 1 and 2 of the application. He argued that the Defendant has declined to transfer a portion of the suit parcel of land despite the Plaintiff paying him a total sum of Kshs. 8, 185, 000 being the purchase price. He directed the court to the various annexures within the supporting affidavit that included two Sale Agreements and Acknowledgement forms duly filled in. He said the Plaintiff has realized there are several persons claiming purchasers' interest over the suit parcel of land and is apprehensive over the Defendant's action and hence is seeking the court's intervention to safeguard her interests.

Upon perusing the pleadings filed herein and hearing arguments from counsel for the Applicant the court finds that the key issues for determination are:

- a) Whether the Plaintiff purchased a total of eleven (11) acres of the suit land ;
- b) Whether the Defendant has failed to transfer the purchased eleven (11) acres of the suit land to the Plaintiff

The Court notes that from the two sale agreements attached to the applicant's supporting affidavit marked LWT 3 and LWT 5, it is evident that there were two sale agreements for the purchase of a total of eleven (11) acres from land parcel number KAJIADO/OLCHORO - ONYORE/5580, duly executed by the Plaintiff and the Defendant duly. The Court notes that as per annexure LWT 4 in the supporting affidavit, the Defendant acknowledged receipt of the payment of the purchase price totalling Kshs. 3,400,000.

Further, from annexure LWT 6 which are copies of Search from the NGONG Land Registry, it is evident that there are four persons claiming purchaser's interest over the suit land parcel number KAJIADO/OLCHORO - ONYORE/5580. The Court notes that the Plaintiff is the fifth person who has registered a caution over the suit land claiming purchaser's interest.

The principles for granting of temporary injunctions were settled in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358** as follows:

"First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience."

The Court finds that in this instance the Plaintiff has established a prima facie case as against the Defendant, that she purchased a total of eleven (11) acres from Land Parcel Number KAJIADO/OLOCHORO - ONYORE/5580. Despite paying the purchase price as agreed, the Defendant has declined to transfer the purchased eleven (11) acres to the Plaintiff. There are also several persons claiming purchaser's interest over the suit parcel of land. The Court finds that the Plaintiff will suffer irreparable loss and damage if her rights over the suit parcel of land is not safeguarded..

The Court hence allows prayers 1 and 2 of the instant motion as against the Defendant, pending the hearing and determination of the suit. The costs will be in the cause.

DATED, SIGNED AND DELIVERED AT KAJIADO THIS 15TH JUNE, 2017

CHRISTINE OCHIENG

JUDGE

REPRESENTATION.

No appearance for plaintiff

Nyatu for defendant

Court Assistant- Mpoye