



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 200 OF 2013**

**RUTH NJERI KUNIARA.....PLAINTIFF**

**VERSUS**

**EQUITY BANK LTD.....1<sup>ST</sup> DEFENDANT**

**CHRISTOPHER KIMAMO.....2<sup>ND</sup> DEFENDANT**

**JEREMIAH GICHURU WACHRA.....3<sup>RD</sup> DEFENDANT**

**ONESMUS MACHARIA WAITHAKA.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application dated 3<sup>rd</sup> July 2015 was brought by the 2<sup>nd</sup> defendant, **CHRISTOPHER KIMAMO MUCHIRI**. It is an application for an injunction to restrain the plaintiff, **RUTH NJERI KUNIARA**, from trespassing upon, wasting, disrupting, alienating or otherwise interfering or dealing with **TITLE No. I.R 52465 L.R. No. 14225/60**.
2. The applicant is the registered proprietor of the suit land.
3. It is common ground that the applicant purchased the suit land from **JEREMIAH GICHIRU WACHIRA** and **ONESMUS MACHARIA WAITHAKA**.
4. According to the applicant, he had no prior dealings with the 1<sup>st</sup> defendant, **EQUITY BANK LTD**, prior to purchasing the suit property. The applicant also said that he had not had any prior dealings with the plaintiff, before he bought the property. Therefore, the applicant says that he was an innocent purchaser for value.
5. In his submissions, the applicant stated that the persons from whom he purchased the property were not parties to this suit.
6. However, a perusal of the record of the proceedings reveals that the plaintiff sought and was granted leave to enjoin both Jeremiah Gichuru Wachira and Onesmus Macharia Waitthaka into this case. The said leave was granted on 22<sup>nd</sup> October 2015.
7. It is significant that on that date, the 1<sup>st</sup> defendant was represented by Mr. Wambua advocate, who

informed the court that his client had no objection to the joinder.

8. The 2<sup>nd</sup> defendant asserted that he is in occupation of the land, and that if the plaintiff were allowed to enter onto the said property, she would be a trespasser. That assertion is premised on the 2<sup>nd</sup> defendant's claim to a valid and legal title to the property.

9. Apparently, the plaintiff had previously been arrested and then charged with the offence of Trespass. The plaintiff was, reportedly, tried and convicted for that offence, by the magistrate's court, Kiambu.

10. If, as the 2<sup>nd</sup> defendant says, the plaintiff had not stopped her actions, it would be necessary to restrain her from trespassing on the suit property.

11. I hold the considered view that law and order need to be accorded maximum respect by all persons. It is the only way that society can enjoy peace and tranquility.

12. Therefore, regardless of her claim to ownership to the suit land, the plaintiff is not entitled to assert that claim by physical might.

13. On the other hand, the 2<sup>nd</sup> defendant insists that by virtue of being the registered proprietor of the suit property, he was entitled to peaceable enjoyment of the said property. Therefore, as the 2<sup>nd</sup> defendant had offered the property as security for a loan which he borrowed from **EQUITY BANK LIMITED** (*the 1<sup>st</sup> defendant*), he believes that he should be allowed to develop the land, so that he can then utilize the returns to service the loan.

14. It is appreciated that if a lender holds a charge over a property, the said lender would most probably exercise its statutory power of sale, if the borrower failed to service the loan.

15. Therefore, I appreciate the 2<sup>nd</sup> defendant's concern, about the possibility of losing the property unless he is able to service the loan. And because the 2<sup>nd</sup> defendant needs to raise money from the development which he was putting up on the suit property, it is fair that the said development should be allowed to proceed.

16. However, by allowing the development to proceed, this court is not to be construed as having determined the issue of ownership of the suit property. That is an issue which remains fully alive, and may only be determined after trial.

17. Why do I say that the issue of ownership remains fully alive, yet the 2<sup>nd</sup> defendant was the registered proprietor?

18. The reason is to be found at the heart of the plaintiff's complaint. She has questioned the manner in which the title to the property changed hands from her name to the names of the Jeremiah Gichiru Wachira and Onesmus Macharia Waithaka.

19. As it is those 2 gentlemen who passed title to the 2<sup>nd</sup> defendant, if their title was not valid, they could not have passed on a good title.

20. So far, the said 2 gentlemen have not placed anything before the court, to help the court understand how they came to own the property.

21. Meanwhile, a perusal of the entries on the title document reveals interesting facts.

22. First, a charge was registered in favour of **EQUITY BANK LIMITED** on 29<sup>th</sup> December 2005. That charge was to secure a facility of Kshs. 2,000,000/-.

23. Ordinarily, and that is a matter about which this court takes judicial notice, a bank would only accept a security whose value was in excess of the facility it was advancing. Therefore, I presume that the suit property was worth more than Kshs. 2,000,000/- in the year 2005.

24. On 7<sup>th</sup> January 2011, the property was transferred to Jeremiah Gichiru Wachira and Onesmus Macharia Waithaka, for the sum of Kshs. 600,000/-.

25. And the same property was then transferred to Christopher Kimamo Muchiri for Kshs. 6,000,000/-.

26. Equity Bank accepted the property as security for a facility of Kshs. 6,000,000/-. The charge in that respect was registered on 3<sup>rd</sup> February 2011.

27. Just over 2 years later, on 20<sup>th</sup> June 2013, Equity Bank registered a further charge for Kshs. 9,000,000/-.

28. Considering that the suit property is now security for facilities amounting to Kshs. 15,000,000/-, it is probable that the sale, (*if there was one*), for Kshs. 600,000/- appears to be suspect.

29. Therefore, I hold the considered view that it is critical to all the parties to the suit, that the subject matter of the case be conserved. Accordingly, I now order as follows;

*a. The plaintiff is restrained from trespassing onto the suit property until the suit is heard and determined.*

*b. The 2<sup>nd</sup> defendant is restrained from disposing of, alienating or further encumbering the suit property until the suit is heard and determined.*

*c. The costs of the application shall be in the cause.*

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>rd</sup> day of October 2016.**

**FRED A. OCHIENG**

**JUDGE**

***Ruling read in open court in the presence of***

No appearance for the Plaintiff

Wambua for the 1<sup>st</sup> Defendant

Miss Kiongi for the 2<sup>nd</sup> Defendant

Collins Odhiambo – Court clerk