



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 660 OF 2013

ROSE WANJA MWANGIPLAINTIFF

VERSUS

ANDERSON NJERU ONESMO1ST DEFENDANT

STEPHEN KARIUKI NGANGA2ND DEFENDANT

MARY WANJA NGANGA3RD DEFENDANT

RULING

By her amended plaint filed herein on 20th February, 2014, the plaintiff sought judgment against the defendants jointly and severally in the following terms:-

- a. ***That the title deed for L.R EVURORE/EVURORE/34 be cancelled from the names of the defendants and the same be registered in the plaintiff's names and in the alternative refund of the value of the said land at current open market rates together with all the developments thereon***
- b. ***Costs and interest of the suit***

The basis of the plaintiff's claim was that in 2003 she purchased L.R EVURORE/EVURORE/34 from one TERESIA WAMBUI NGANGA alias BEATRICE WAMBUI NGANGA (deceased), whose Estate is administered by the 2nd defendant, at a price of Ksh. 45,000/= . However, the deceased took advantage of plaintiff's illiteracy and transferred to her a different parcel of land known as EVURORE/EVURORE/46. Following the death of the deceased, the 2nd and 3rd defendants fraudulently transferred the parcel of land EVURORE/EVURORE/34 to the 1st defendant yet that is the land the plaintiff now occupies.

Simultaneously with the filing of that suit, the plaintiff/applicant filed a Notice of Motion under **Order 40 Rule 1 of the Civil Procedure Rules** seeking a temporarily injunction restraining the defendants/respondents, their agents/servants or anyone else claiming through them from evicting the plaintiff/applicant from L.R EVURORE/EVURORE/34 or charging, entering or dealing in any way with the said parcel of land.

Grounds of opposition were filed against the said application and the respondents argue, inter alia that the plaintiff/applicant has not met the grounds for the grant of an interlocutory injunction and neither is she the registered proprietor of the land in dispute nor is she in possession of the same. In any event, the plaintiff/applicant has sought as a remedy a refund of the purchase price which implies that damages are an adequate relief.

Submissions have been filed by both sides on the said application which is the subject of this ruling.

Being an application for injunctive remedy, this application has to be considered in light of the principles set out in the case of **GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358** which are:-

1. ***The applicant must show a prima facie case with a probability of success***
2. ***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***
3. ***If in doubt, the Court will decide the application on a balance of convenience***

The genesis of this dispute is an agreement between the plaintiff and the deceased TERESIA WAMBUI WAMBUI NGANGA over land parcel No. EVURORE/EVURORE/46. I have seen a copy of that agreement which is not in English language and as there is no interpretation of the same (as would be required), I cannot make much out of it in the circumstances. However, from what I can discern through a casual glance and also the other pleadings herein, the agreement between the two related to the parcel of land known as EVURORE/EVURORE/46 and not EVURORE/EVURORE/34 as pleaded in the plaint. The plaintiff/applicant's case is that the deceased took advantage of her illiteracy and transferred to her EVURORE/EVURORE/46 and not EVURORE/EVURORE/34. Whether infact there was fraud on the part of the deceased TERESIA WAMBUI NGANGA alias BEATRICE WAMBUI NGANGA in transferring to the plaintiff/applicant the wrong parcel of land will be a matter to be determined at the trial. For now, the Court can only go by the agreement that the plaintiff/applicant and the deceased TERESIA WAMBUI NGANGA alias BEATRICE WAMBUI NGANGA entered into because ordinarily, documents are supposed to speak for themselves and the agreement in question is, on the face of it, clear as to what parcel of land the parties were selling and buying and that is EVURORE/EVURORE/46. On the basis of that agreement, this Court is not satisfied that the plaintiff/applicant has established a prima facie case with a probability of success which is the first test in the **GIELLA** case (supra). The plaintiff/applicant's application must therefore fail.

But that is not all. The second test in the **GIELLA** case (supra) is that the applicant must show that if the injunction is not granted, she will otherwise suffer injury that cannot be compensated in damages. Going by her own pleadings, the plaintiff/applicant's prayer is that if the title deed in respect of EVURORE/EVURORE/34 cannot be cancelled from the names of the defendants and registered in her names, then the defendants should refund her the value of the said land at current market rates together with all the developments thereon. That is a clear admission that what the plaintiff/applicant seeks can be quantified in monetary terms. Therefore, even if the injunction sought is not granted, any injury that she may suffer will not be one that she cannot be compensated for by an award of damages.

In the circumstances, the plaintiff/applicant's Notice of Motion dated 22nd August, 2013 is dismissed with costs.

As the subject matter is situated in Embu where we now have an Environment and Land Court, it is accordingly transferred to that Court where it will be mentioned on 30th October, 2014 for further directions as to trial.

It is so ordered.

B.N. OLAO

JUDGE

14TH OCTOBER, 2014

14/10/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Magee for Njiru for Plaintiff – present

No appearance for Defendant

COURT: Ruling delivered in open Court this 14th day of October, 2014

Mr. Magee for Mr. Njiru for Plaintiff/Applicant present

No appearance for Respondent.

B.N. OLAO

JUDGE

14TH OCTOBER, 2014