



**REPUBLIC OF KENYA**

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

**E AND L NO. 106 OF 2012**

ASENATH  
KANJIRU.....PL  
PLAINTIFF

VERSUS

PAUL KITHINJI  
IKIUGU.....1ST  
DEFENDANT

MARTIN  
KIUGU.....2ND  
DEFENDANT

**RULING**

This application is dated 26th day of September, 2012 and seeks orders:

- 1. That in the 1st instance, Court do certify the matter urgent and service be dispensed with.**
- 2. That Court do issue an order of temporary injunction to stop the Defendants/Respondents from alienating, selling, or whatsoever interfering with L. R. NO. NYAKI/THUURA 3716 pending the hearing and determination of this Application.**
- 3. That Court do issue an order of temporary injunction to stop Defendant/Respondent from alienating, selling or whatsoever interfering with L. R. No. Nyaki/Thuura/3716 until further orders of the Court or until suit is heard and determined.**
- 4. That costs be in the cause.**

It was submitted that the suit land was erroneously registered in the name of the 1st Defendant after the Plaintiff had sold land to the 1st Respondent. Whereas parcel No. Nyaki/Thuura/3715 should have been registered in the name of the Plaintiff, it was registered in the name of the Defendant and parcel No. Nyaki/Thuura 3716 was wrongly registered in the name of the Plaintiff. This meant that on the ground the Plaintiff and the Defendant were occupying each other's land.

It was submitted that the Applicant had developed the suit land and would suffer irreparable loss if the order of injunction prayed for was not granted.

For the 1st Defendant, it was claimed that their replying affidavit brought out the fact that the Plaintiff's claim was a total falsehood. Her claims were investigated by the CID and found to be false. The Court

was referred to a scene visit by the Court's Executive Officer ordered by Hon. Justice Makau, J, which found that she occupied only ¼ acre whereas the 2nd Defendant occupied 4¾ acres. It was submitted that in view of this finding, the orders sought would be tantamount to evicting the 2nd Defendant. Counsel for the 1st Defendant urged that the Application should be dismissed with costs but conceded that the Court, may, if it so pleases maintain status quo.

Counsel for the 2nd Defendant submitted that the Plaintiff was guilty of material disclosure and had therefore come to Court with unclean hands. He reiterated that the affidavit of the 2nd Defendant sworn on 5.10.2012 clearly brought out the fact that the Plaintiff and the Defendant had agreed to exchange the parcels of land and as a result the Plaintiff had sub-divided parcel No. 3715 into 3881, 3882 and 3883. She had sold 3882 and 3883. Her claim, it was submitted, amounted to a claim for unjust enrichment as she had already sold parts of parcel No. 1715.

It was submitted that the Plaintiff had not established a *prima facie* case. The 2nd The 2nd Defendant urged the Court to dismiss the Plaintiff's Application with costs.

I have looked at the affidavits, documents, other averments and the submissions of the parties. At this interlocutory stage, the Court must caution itself not to pronounce itself on matters which should be dealt with during the determination of the suit after all parties are heard. I am guided by the pronouncement of the Court of Appeal in **Mbuthia Vs Jimba Credit Finance Corporation and Another [1988] KLR**. The Court opined:

**“The correct approach in dealing with an application for an Interlocutory Injunction is not to decide the issue of facts but**

**rather to weigh up the relevant strength of each side's propositions. The lower Court judge in this case had gone far beyond his proper duties and made final findings on disputed affidavits.”**

I have looked at the scene report by this Court's Executive Officer. As I have already said, I have taken into account the propositions of all the parties. I find that the Plaintiff/Applicant has not satisfied the principles required for a Court to grant an Order of Injunction. In the interest of substantive Justice and until the suit is heard and determined, I will in accordance with Section 63 of the Civil Procedure Act, order that status quo be maintained in the manner described in the Executive Officer's Scene Report which is based on his visit to the disputed land in the company of the disputants and their advocates on 9.10.2012.

In the circumstances, I order as follows:

**1. The plaintiff's Application dated 26.9.2012 is dismissed and costs to be in the cause.**

**2. Status quo be maintained as contained in the Report of the Scene Visit by the Executive Officer (supra).**

**Delivered and dated in Open Court at Meru this 7th day of October, 2013 in the presence of:**

Muthomi for 1st Defendant/Respondent

Mutuiru Arimi h/b

C. Otieno for Plaintiff/Applicant

Anampiu h/b Mwirigi Kaburu for 2nd Respondent

**P. M. NJOROGE**

**JUDGE**