

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2750 OF 1996**

**BEATRICE WANJA MBURU & 4 OTHERS..... PLAINTIFF
VERSUS
SAMUEL MBURU KIMANI..... DEFENDANT**

RULING

This is the plaintiffs application for an order of injunction to restrain the 2nd defendant from selling transferring disposing of damaging, wasting dealing with land title No. L.R Gatanga/Kirwara/687 until the hearing of the suit.

The applicant widow of Samuel Mburu (first defendant) now deceased. The other plaintiffs are children of the first plaintiff and first defendant. She first sold the land in dispute to the 2nd defendant. The second defendant is registered as proprietor and is in possession.

Plaintiff's suit seeks to recover the land from the second defendant. I have considered the supporting affidavit, replying affidavit and the counsels submissions. This application should not in my view be decided on the basis of whether or not the plaintiff have shown a prima facie case with a probability of success. All the applicants are asking is that the land in dispute be preserved until the determination of the suit. They are not asking that the second defendant be dispossessed or be restrained using the land.

Rather the application should be decided on the balance of convenience. The plaintiffs believe that they have a strong case against the 2nd defendant. If the land is not preserved and is sold or charged pending the determination of the suit the suit will be prejudiced and nugatory. The principle of us penance applies.

It is just that the land be preserved until the determination of the suit.

Consequently I allow the application and grant orders in terms of para 1 of the amended application until the determination of the suit.

Costs in the cause

E. M. Githinji

Judge

3.7.98

Mr. Muturi present

Mr. Ngala present