



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. CASE NO. 157 OF 2017

**ESTHER MUNYU NDUMA (*Suing as the Legal Representative/administrator*
of the estate of the late NDUMA MARUTI.....**PLAINTIFF****

VERSUS

MILIKA NDUMA THAGARI.....1ST DEFENDANT

JOYCE NGUNGI NAMU.....2ND DEFENDANT

RULING

1. By a plaint dated 9th October 2017 and filed on 10th October 2017, the Plaintiff sought the following reliefs against the 1st and 2nd Defendants;

a. A declaration that the award made against the Plaintiff's husband by Siakago Land Disputes Tribunal and the subsequent decree issued by the Principal Magistrate Siakago Law Courts in LDT case No. 26 of 2010 are unlawful, and therefore null and void.

b. A declaration that any action made by the Land Registrar Mbeere on the basis of the award and decree was null and void.

c. An order directing the Land Registrar Mbeere to cancel registration of the owners of land parcels No. Nthawa/Kirie/1777, 1778, 1779, 1780 and 1781 so that they revert to the initial land parcel No. Nthawa/Kirie/784 in the names of the Plaintiff's husband Nduma Maruti.

d. Costs of this suit and interest.

e. Any other or further relief that this honourable court deems fit to grant.

2. It was pleaded by the Plaintiff that the Siakago Land Disputes Tribunal had no jurisdiction to award *Title No Nthawa/Kirie/784* to the 1st Defendant's late husband hence the instant suit.

3. Simultaneously with the filing of the plaint, the Plaintiff filed a notice of motion dated 9th October 2017 under certificate of urgency seeking various interim reliefs. The main reliefs for purposes of this ruling are:

a. An interlocutory injunction to restrain the Defendants from evicting and interfering with the Plaintiff's peaceful occupation of Title Nos. Nthawa/Kirie/1778, 1779, 1780, 1777 and 1781 (hereinafter called the "suit properties") pending the hearing and determination of the suit.

b. An interlocutory injunction to restrain the Defendants from selling, transferring, charging, alienating leasing or in any way dealing with the suit properties.

4. The said application was based upon the grounds shown on the face thereof and supported by an affidavit sworn by the Plaintiff on 9th October 2017. The Plaintiff contended that she had been in occupation for the suit properties where her matrimonial house is located and that she had extensively developed the suit property. It was further stated that the Defendants had threatened to evict her and for that purpose had filed Siakago SRMCC No 56 of 2015. The Plaintiff was also apprehensive that the Defendants might alienate or otherwise deal with the suit properties before this suit is heard and determined.

5. The court has considered the material on record and is satisfied that the Plaintiff has satisfied the requirements for the grant of an order of

interlocutory injunction as set out in the case of ***Giella Vs Cassman Brown & Co Ltd [1973] EA 358***. It would appear, *prima facie*, that the 1st Defendant's late husband obtained the suit properties through an award of the Siakago LDT whose jurisdiction to make the award has been seriously challenged. The court is aware of the limited nature of jurisdiction which was conferred upon the Land Disputes Tribunal by the Land Dispute Tribunals Act 1990. A *prima facie* case has been established.

6. The court is also satisfied that the Plaintiff's matrimonial home falls on part of the suit properties and that she would suffer irreparable harm and damage if she is evicted or the suit properties alienated before conclusion of the suit. The court is consequently satisfied that she has met the 2nd requirement for the grant of an interlocutory injunction.

7. Even if the court were to consider the balance of convenience, the same would still be in favour of the Plaintiff who appears to be in occupation. The court is of the view that the Plaintiff would suffer greater hardship than the Defendants if the orders sought are not granted.

8. The upshot of the foregoing is that the court finds merit in the Plaintiff's notice of motion dated 9th October 2017 and the same is hereby allowed in terms of prayer Nos 2 and 3 thereof. Costs of the application shall be in the cause.

9. Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 21st day of MARCH, 2018

In the presence of Ms Rose Njeru holding brief for Ms Muthoni for the Plaintiff and Ms Njuguna holding brief for Mr Momanyi for the Defendants.

Court clerk Njue/Leadys

Y.M. ANGIMA

JUDGE

21.03.18