



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 104 OF 2018**

**BIG TREE FARM LIMITED.....PLAINTIFF**

**VERSUS**

**MARY ANGOLA RONO & 25 OTHERS....DEFENDANTS**

**RULING**

1. The Notice of Motion dated 23/11/2018 and filed in court on 26/11/2018 seeks the following orders:

(1) That this application be treated as urgent and service thereof be dispensed with at 1<sup>st</sup> instance.

(2) That pending the hearing and determination of this application *inter partes* the defendants herein, their agents, servants or anybody claiming through them jointly and/or severally be restrained by a temporary injunction from dealing with using claiming or in any other manner dealing with land known as LR. No. 8986 having IR No. 7098/2015.

(3) That at inter-partes hearing the defendants herein prayer 2 be confirmed until determination of this suit.

(4) That the O.C.S. Kiminini Police Station to enforce the orders herein.

(5) Costs of this application be provided for.

2. The Notice of Motion is founded on the grounds set out at the foot of the application and in the supporting affidavit of **Gladys Nakhumicha Wabuge** one of the directors of the plaintiff company, sworn on 23/11/2018. These are that the applicant is the legal owner of the suit land; that the defendants jointly and severally have threatened to invade and/or enter the suit land; that the defendants are strangers to the plaintiff; that the defendant are using force and crude means to gain entry; that the situation on ground could be acrimonious and that the interest of justice demand grant of orders sought.

3. The replying affidavit to the application dated 23/11/2018 by the 7<sup>th</sup> defendant **Michael Mulong** avers that he and his wife purchased a portion of the suit land measuring 3 acres in 2004 from **Geoffrey Kilwake Wabuge**, a beneficiary of the estate of the late **Wafula Wabuge** which owns the land; that however they were only put into possession of only 1.5 acres which they use as their matrimonial home to date; that the plaintiff company was incorporated in 2014 long after the purchased of the land by the deponent and his wife. The affidavit exhibits a permanent house said to be built on the land bought.

4. Replying affidavits drafted on almost the same terms as that of the 7<sup>th</sup> respondent have been filed by the 1<sup>st</sup> respondent, the 6<sup>th</sup> respondent, the 11<sup>th</sup> respondent, the 12<sup>th</sup> respondent, the 15<sup>th</sup> respondent, the 20<sup>th</sup> respondent, the 21<sup>st</sup> respondent, and the 24<sup>th</sup> respondent.

5. The 6<sup>th</sup>, 7<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup> and 24<sup>th</sup> respondents filed written submissions on 2/4/2019.

6. The common strand in all the filed replies is that the respondents purchased a portion of the suit land vide agreement made at different times. More photographs showing houses, some of them permanent, built on the purchased portions, are exhibited in many of the replying affidavits. There is evidence that many of the defendants are therefore in possession of the portions they purport to have purchased from beneficiaries of the estate of the deceased.

7. The case if **Giella vs Cassman Brown 1973 EA 358** sets the conditions for the grant of an order of interlocutory injunction as follows: one the applicant must demonstrate a prima facie case and two, he must demonstrate that he would suffer loss that can not be compensated for by way of damages. If the court is in doubt, then it may decide the application on a balance of convenience.

8. It is also worth noting that ordinarily an order of temporary injunction will not be granted at an interim stage if the event sought to be

injunction has already taken place. In the current application it is clear that many of the respondents have been in possession of portions they purported to have purchased for a period of time. It is the propriety of those transactions that will be at issue in the main suit. I also find that the applicant concealed material facts and that the application dated is not merited.

9. In my view this is not an application in which orders of injunction are deserved. I therefore dismiss the application with costs and order that the parties do comply with **Order 11** of the **Civil Procedure Rules** and then set the main suit down for hearing.

**Dated, signed and delivered at Kitale on this 30<sup>th</sup> day of April, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**30/4/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga holding brief for Wafula for plaintiff

Mr. Bororio for 6<sup>th</sup>, 7<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup> and 24<sup>th</sup> respondents

Mr. Bororio holding brief for the 1<sup>st</sup> respondent

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**30/4/2019**