

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE NO. 101 OF 2017

MARGARET NJOKI NJOROGIPLAINTIFF

VERSUS

ELIZABETH WAIRIMU KINUTHIA1ST DEFENDANT

RICHARD GICHINI WAIREGI2ND DEFENDANT

RULING

1. By Notice of Motion dated 8th March 2017, the plaintiff seeks an injunction to restrain the defendants from selling, transferring, charging, leasing or in any other way dealing with title number Nakuru Municipality Block 22/718 (the suit property) pending hearing and determination of this suit. The application is supported by an affidavit sworn by the plaintiff.

2. Though served, the defendants have so far neither entered appearance in the suit nor filed any response to the application. They equally did not attend its hearing. Counsel for the applicant thus asked the court to allow the application.

3. I need not belabour the principles applicable while dealing with an application such as the present one. The applicant has to satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. She is required to establish a *prima facie* case with a probability of success. Even if she succeeds in doing so, an injunction will not be issued if damages can be an adequate compensation to her. Finally, if the court is in doubt as to the answers to the above two tests then the court will determine the matter on a balance of convenience. As was recently held by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, all the three **Giella** conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration.

4. From the material placed before the court, I am satisfied that the plaintiff was registered as proprietor of the suit property on 31st July 2007 and that the said property was transferred to the 2nd defendant on 11th May 2016. According to the plaintiff, she left the title document in the custody of the 1st defendant who is her niece and who irregularly transferred the property to herself on 12th April 2016. Although no certificate of search was annexed to support the allegation that the 1st defendant became registered proprietor on 12th April 2016, I have no reason to doubt it in the absence of evidence to the contrary. I further note that a restriction barring any dealings was registered against the suit property on 20th July 2016. In the circumstances, I am persuaded that the plaintiff has established a *prima facie* case with a probability of success. It is necessary to preserve the suit property. I do not think that damages will be an adequate remedy to the plaintiff.

5. In the end, I grant an injunction to restrain the defendants from selling, transferring, charging or leasing title number Nakuru Municipality Block 22/718 pending hearing and determination of this suit. Costs of the application are awarded to the plaintiff.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 19th day of June 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Ms Wanuma holding brief for Mr Mutonyi for the plaintiff/ applicant

No appearance for the 1st defendant/respondent

No appearance for the 2nd defendant/ respondent

Court Assistants: Beatrice & Lotkomoi