

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC NO. 1186 OF 2015

JANE WANJIRU THIONGO (Suing in her capacity as the

Administrator of the late Dedan Thiongo Kingangi).....**PLAINTIFF/APPLICANT**

=VERSUS=

SAMUEL KIMANI THUBE.....**DEFENDANT/RESPONDENT**

RULING

1. The Applicant is the administratrix of the estate of the late Dedan Thiong'o Kingangi (Deceased) who was the registered owner of LR No. Dagoretti/Uthiru/222. This property was later subdivided and it resulted among other parcels LR No. Dagoretti/Uthiru/988 (suit property).
2. The Applicant filed a Notice of Motion dated 31st January 2019, in which she seeks an injunction against the Defendant/Respondent from further construction on the suit property. The Respondent who was duly served with the Notice of Motion neither filed any grounds of opposition or replying affidavit.
3. The Applicant contends that in the year 2015, she visited the suit property and found the Respondent who was constructing on the same. She asked the Respondent to stop construction on the property but the Respondent did not stop. The Respondent continued construction and has since completed 20 units which he has let out to tenants. The Respondent is now embarking on construction of 20 other units.
4. The Applicant further contends that she has reported the Respondent to Kabete Police Station but that the Respondent has not stopped the construction. The Applicant now wants the Court to issue an injunction against the Respondent which injunction should be enforced by the OCS Kabete Police Station.
5. I have considered the Applicant's application as well as the oral submissions by her Counsel during the hearing. The Respondent has been in possession since 1992. The Respondent has already constructed and completed the construction. There are tenants in the suit property. The Applicant had filed a similar application in 2015. The 2015 application was abandoned because there was a wrong parcel of land quoted. Amendments have since been done. This case has a date for haring in September, 2019.
6. There was a succession cause which was filed in the Family Division of the High Court. Confirmation of the matter was put on hold to await determination of ownership of the suit property in which the Respondent had filed a protest against confirmation. To grant an injunction as prayed for will amount to eviction of the Respondent. I therefore find that no injunction can be granted in the circumstances. I dismiss the Applicant's application with no order as to costs.

Dated, Signed and delivered at Nairobi on this 27th day of August, 2019.

E.O.OBAGA

JUDGE

In the presence of Mr Ng'ang'a for Defendant

Court Clerk: Hilda

E.O.OBAGA

JUDGE

27/8/2019