REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ENVIRONMENT AND LAND CASE NO. 16 OF 2018 (O.S)

JANET KANANU.....PLAINTIFF

VERSUS

JOHN THURANIRA ARUJAH.....l1ST DEFENDANT

SHEILA GACHERI THURANIRA.....2ND DEFENDANT

DUNCAN KITHINJI THURANIRA.....3RD DEFENDANT

MUREITHI ARUJAH.....4TH DEFENDANT

MARTIN KINOTI ARUJAH.....5TH DEFENDANT

RULING

1. This matter emanates from an application by way of a Notice of Motion dated 8th May 2018 pursuant to ***Sections 1A, 1B, 3A and 63 (e) and (c) of the Civil Procedure Act (CAP 21), Sections 68 of the Land Registration Act, 2012, Section 13 (1) and (7) of the Environment and Land Court Act and Order 40 Rules 1, 2, 3 & 4 of the Civil Procedure Rules 2010***. The applicant seeks an order of inhibition restricting any dealings or transfer on L. R. No NYAKI/MULATHANKARI/216 (hereinafter *'the Suit Land'*) as well as an injunction restraining the defendants and anyone acting on their behest from interfering with plaintiff's quiet occupation of the Suit Land pending the hearing of the suit. She also wants the court to order that status quo prevailing as at May 2018 regarding possession, user occupation and registration of the suit land to be maintained.

2. The grounds in support of the application are set out in the body of the Motion and supporting affidavit of Janet Kananu sworn on 8th May 2018. It is contended that since 1990, the plaintiff has been in occupation of the Suit Land given that she got married and began to cohabit with her husband Phineous Bikuri Maingi (*deceased*) whom she found in occupation of it. For over 28 years the plaintiff has lived and continues to live there with her family where she has made substantial developments in a manner that is open, exclusive, continuous and uninterrupted. That it would only be fair, just and equitable to preserve the Suit Land to enable the plaintiff herein to present her case.

3. The application was opposed through the replying affidavit of John Thuranira Arujah sworn on 24th July 2018 made with the authority of the 2nd and 4th respondents. He deponed that the Suit Land is registered under his name and that of his children, 2nd to 5th respondents. That it is not true that the applicant occupies the Suit Land as she lives on NYAKI/MULATHANKARI/71 which shares a boundary with the Suit Land. Her house and all her developments are on the said land.

4. This matter was to be canvassed by way of written submissions. At the time of writing this ruling, the plaintiff had not yet filed her submissions, but the 1st, 2nd and 4th defendants had filed their submissions.

5. The test for any order of an injunction is laid down in the landmark case of ***Giella v Cassman Brown & Company Ltd [1973] EA 358*** where the three conditions were stipulated as follows:

> ***"First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience (E.A. INDUSTRIES -VS- TRUFOODS (1972) EA 420."***

6. The application of these conditions was elaborately explained by the Court of Appeal in the case of **Yellow Horse Inns Limited v Nduachi Company Limited & 2 others [2017] eKLR** where it was stated as follows:

> ***"All the three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. So that if the applicant establishes a prima facie case, that alone will not avail him an injunction. The court must further be satisfied that the injury the applicant will suffer if an injunction is not granted, will be irreparable. Therefore, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no order of injunction should normally be granted however strong the applicant's claim may appear at that stage. If a prima facie case is not established, then irreparable injury and balance of convenience need no consideration and the matter ends there. Only where there is doubt as to whether a prima facie case is made out or as to the adequacy of the remedies in damages that the question of balance of convenience would arise. It must follow from this that the existence of a prima facie case does not permit the applicant to "leap-frog" to an injunction directly without crossing the other second, and probably the third hurdles in between."***

7. The respondents have averred that plaintiff actually resides on parcel Nyaki/Mulathankari/71 which is adjacent to parcel 216. The issue of occupation and utilization of these parcels is uncertain. The court cannot determine what was the status quo as at May 2018. Further evidence is needed to ascertain the status quo. A scene visit would certainly give a sneak preview of the status quo. In the circumstances, I find that at this stage the order of injunction is not merited. However, in order to preserve the substratum of the suit land, it is necessary to have the orders of inhibition in place.

8. Final orders;

> **1) The orders of inhibition set forth in prayer 2 in the application dated 8.5.2018 and granted on temporary basis on 12.6.2018 are hereby confirmed until the suit is heard and determined.**
>
> **2) All the other prayers sought in the application dated 8.5.2018 are hereby dismissed.**
>
> **3) Each party is to bear their own costs of the application.**

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 15TH DAY OF OCTOBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muthomi for plaintiff

M. Kariuki for defendants/respondents 1st defendant

HON. LUCY. N. MBUGUA

ELC JUDGE