



**REPUBLIC OF KENYA**

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

**CASE NO. 114 OF 2018**

**1. ELIZABETH CHEBET LANGAT**

**2. ERNEST KIPROTICH CHERUIYOT**

**3. ERIC LANGAT CHERUIYOT**

**4. ENOCK KIPTOO CHERUIYOT (Suing as the administrators of the Estate**

**of Samwel Cheruiyot Langat).....PLAINTIFFS**

**VERSUS**

**JOEL KIPNGENO BYOMDO.....DEFENDANT**

**RULING**

1. This ruling is in respect of plaintiffs' Notice of Motion dated 16<sup>th</sup> March 2018, an application through which the plaintiffs seek the following orders:

1. *Spent*

2. *Spent*

3. *That after the hearing of this application inter-partes this Honourable Court do issue a further temporary injunction restraining the Defendant/Respondent either by himself, his agents, servants, successors or assigns or otherwise howsoever from evicting the plaintiffs and or from damaging, selling, alienating or disposing the property known as NAKURU/OLENGURUONE/KIPTAGICH/59 ("the Suit Property") pending determination of the suit.*

4. *THAT the cost of this application be provided for.*

2. The application is supported by an affidavit sworn by the 1<sup>st</sup> plaintiff. She deposed that she and the other plaintiffs are the administrators of the estate of Samwel Cheruiyot Langat (deceased) pursuant to grant of letter of administration issued on 23<sup>rd</sup> January 2014 in Nairobi Succession Cause No. 2691 of 2013. That the deceased took possession of the parcel of land known as Nakuru/Olenguruone/Kiptagich/59 (the suit property) in 1992 and planted tea on it which he sold to the nearby Kiptagich factory. That the plaintiffs are known by the neighbours as the people in possession of the suit property and as its owners for the last 25 years. When the deceased passed away on 16<sup>th</sup> September 2011, she included the suit property as one of his assets in the succession proceedings. That on 1<sup>st</sup> December 2017, the defendant's son in law one Stephen Tirop called the plaintiffs and claimed that the suit property belongs to the defendant and demanded that the plaintiffs uproot the tea and hand back the property to the respondent. That the defendant has a title deed for the suit property in his name and the plaintiffs therefore fear that the defendant may alienate the suit property.

3. The defendant opposed the application through his replying affidavit sworn on 9<sup>th</sup> May 2018 wherein he deposed that he is the registered proprietor of the suit property and that he has filed an application for revocation of the grant to the plaintiffs since their assertion that the suit property belongs to the deceased is erroneous. He added that the deceased had approached him during his lifetime with a view to purchase the suit property but the defendant could not dispose of it since the property is in a catchment area where there is a government caveat.

4. Parties were ordered to file and exchange written submissions. The plaintiffs filed submissions but the defendant did not file any. The plaintiffs argued that they have a prima facie case and urged the court to allow the application.

5. I have considered the application, the affidavits and the submissions. The plaintiffs seek an interlocutory injunction. They must therefore

satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. This entails establishing a *prima facie* case with a probability of success. Even if a *prima facie* case is established, an injunction will not issue if damages can be an adequate compensation. 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. All these conditions and stages are to be applied as separate, distinct and logical hurdles which the applicants are expected to surmount sequentially. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. See **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**.

6. The plaintiffs' main claim in the plaint is that they have been in possession of the suit property for an uninterrupted period of over 25 years and that they have therefore acquired it through adverse possession. The defendant admits being the registered proprietor of the suit property. He has not expressly denied the plaintiffs' claim of possession but in fact seems to acknowledge it when he deposes that the deceased had approached him during his lifetime with a view to purchase the suit property but he could not sell it to the deceased since the property is in a catchment area where there is a government caveat. I am therefore persuaded that the plaintiffs have established a *prima facie* case. There is need to preserve the suit property as well as the plaintiffs' possession of it pending hearing and determination of this suit. I do not think that damages would be an adequate remedy to the plaintiffs. The application is merited.

7. I therefore grant an injunction restraining the defendant/respondent either by himself, his agents, servants, successors or assigns from evicting the plaintiffs and or from damaging, selling, alienating or disposing the property known as Nakuru/Olenguruone/Kiptagich/59 pending hearing and determination of this suit. Costs of the application are awarded to the plaintiffs.

**Dated, signed and delivered in open court at Nakuru this 28<sup>th</sup> day of November 2019.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

No appearance for the plaintiffs/applicants

No appearance for the defendant

Court Assistants: Beatrice & Lotkomoi