



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC PETITION NO. 447 OF 2015

MARY WANJIKU KARANJA.....PLAINTIFF/APPLICANT

=VERSUS=

MICHAEL NDICHU

WANGARURO T/A NDICHU & ASSOCIATES....1ST DEFENDANT/RESPONDENT

CHARLES KIHAGI THUAH.....2ND DEFENDANT/ RESPONDENT

TITUS MBUGUA KABERI.....3RD DEFENDANT/ RESPONDENT

THOMAS THUKU NG'ANG'A T/A T. T.

NGANGA ASSOCIATES ADVOCATE.....4TH DEFENDANT/ RESPONDENT

SAMUEL K. MUKANDIA.....5TH DEFENDANT/ RESPONDENT

RULING

1. This is the notice of motion dated 25th May 2015 brought under Section 3A of the Civil Procedure Act, order 40 rule 1, order 51 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.

2. It seeks orders:-

1. Spent.

2. Spent.

3. That a temporary injunction be and is hereby granted restraining the defendants/respondents their servants and/or agents from trespassing, interfering, encroaching, developing and or in any way dealing with the property LR NO. 9363/65, IR No. 14628/73 Nairobi pending the hearing and determination of the suit.

4. That the officer commanding police division Kayole, Nairobi do ensure compliance with the orders of this honourable court.

5. That the cost of this application be provided for.

3. The grounds are on the face of the application and set out in paragraphs 1 to 11.

4. The application is supported by the affidavit of Mary Wanjiku Karanja, applicant herein sworn on the 25th May 2015 and a further affidavit sworn on the 20th July 2015.

5. The application is opposed. There is a replying affidavit sworn by Michael Ndichu Wangaruro the 1st defendant/respondent sworn on the 2nd July 2015. There is also a replying affidavit sworn by Charles Kihagi Thuah, the 2nd defendant/respondent sworn on the 13th August

2015.

6. On the 25th October 2018 the court directed that the application be canvassed by way of written submissions. By 29th January 2019, none of the parties had filed submissions. They were given upto the close of business that day to file the same. As at the time of writing this ruling there are no written submissions on record.

7. I have considered the notice of motion the affidavits in support and the annexures. I have also considered the affidavits in reply. The issues for determination are:-

i. Whether the plaintiff's/applicant's application meets the threshold for grant of temporary injunction.

ii. Who should bear costs?

8. At this juncture it is necessary to briefly examine the legal principles governing the applications of this nature. In an application for injunction the onus is on the applicant to satisfy the court that it should grant an injunction. The principles were laid down in the precedent setting case of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358**. In the case of **Mrao Limited vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125** the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

9. In the Case of **Kenleb Cons Ltd vs New Gatitu Services Station Ltd & Another [1990] KLR 557 Bosire J (as he then was)** held that:-

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

I am not satisfied that the plaintiff/applicant deserves this kind of protection.

10. The plaintiff/applicant states that she is the administrator of the Estate of her late husband, Karanja Kago. She further states that the 1st defendant has been trespassing and encroaching on the suit property purporting to own a part thereof. Her late husband never informed her of having sold or bequeathed the said portion to the 1st defendant.

11. That 1st defendant on the other hand states that the late Karanja Kago entered into three agreements with him giving him three acres as payment for the work done in subdivision survey. Paying for the requested planning permissions approvals and processing of title deeds.

12. I find that the allegations of forgery levelled against the 1st and 3rd defendants, by the plaintiff/applicant in paragraph 7 of her supporting affidavit are allegations which have to be proved during the hearing-.

13. I find that she has failed to establish a prima facie case with a probability of success at the trial. She has also failed to demonstrate that she will suffer irreparable los that cannot be compensated by an award of damages if these orders are not granted.

14. In conclusion, I find that the plaintiff/applicant has failed to demonstrate that she deserves the orders sought. I find no merit in this application and the same is dismissed. The costs do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 5th day of December 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the plaintiff

.....Advocate for the defendants

.....Court Assistant