



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC NO. 206 OF 2017

ROSE KINYA MUNYUA.....1ST PLAINTIFF
REGINA NTINYARI MUNYUA.....2ND PLAINTIFF
CLEMENT MURITHI MUNYUA.....3RD PLAINTIFF
LAWRENCE MUGUNA MUNYUA.....4TH PLAINTIFF
FREDRICK KOOME MUNYUA.....5TH PLAINTIFF

VERSUS

UNITED STARS SACCO LTD.....1ST DEFENDANT
ISAAC RINGERA T/A VIEWLINE AUCTIONEERS.....2ND DEFENDANT

AND

MICHAEL MUNYUA MUGAMBI.....INTERESTED PARTY

R U L I N G

1. The Plaintiffs/Applicant filed this suit on 11.07.17 contemporaneously with the filing of this application under Section 1A & 1B and 3 A of the Civil Procedure Act and Order 40 ruler 1 (a) and order 51 Rule 1 of the Civil Procedure rules seeking orders restraining the 2nd Respondent from advertising for sale or selling the land parcel No. L.R NRIMA/IGOKI/987 through Public Auction pending the hearing and determination of the suit.
2. The grounds in support of the application are stated on the face of the application. The application is also supported by the supporting affidavit of Rose Kinya Munyua (on behalf of the other Plaintiffs) along with annexures.
3. The 1st Respondent has opposed the application vide a Replying Affidavit of one Purity Kagwiria filed on 26:07:17. she is the C.E.O of the 1st Defendant.
4. When the application came up for hearing on 25:07:17, the Court gave directions for the application to be canvassed by way of Written Submission after ascertaining that parties had been served.
5. The Plaintiffs and 1st Defendant have filed Submissions.

6. The 1st Plaintiff is the wife of the interested party while 2nd-5th Plaintiffs are their children. The 1st Interested Party has filed a statement of defence whereby he claims that the suit land was fraudulently charged. He has however not filed any response to the application. The Interested Party is on the side of his family, (the plaintiffs) going by his pleadings.
7. The second Respondent has not filed a response to the application, a defence or submissions. This is not surprising since he is an auctioneer who is surely getting instruction from the 1st Defendant.
8. Plaintiffs' claim is that the Suitland L.R No. Ntima/Igoki/987 is matrimonial Property where the family (all Plaintiffs and Interested Party) resides.
9. Plaintiffs aver that the Suitland was charged under unclear circumstances but that they are ready and willing to liquidate the balance of the loan after getting full information regarding the statement of the loan account.
10. Citing the provisions of the land Registration Act, the matrimonial properties, Act and the land Act, Plaintiff's aver that spousal consent to charge the suit land was a requirement.
11. Applicants also aver that they stand to suffer irreparable damage should the only place they call home is alienated.
12. On the part of the 1st Defendant, it is submitted that a loan was advanced to Interested Party that the loan was not paid and that 1st Defendant had no option but to exercise its statutory power of sale which it did by giving instructions to 2nd Defendant.
13. 1st Defendant also avers that it is not interested in the sale of the land if the loan is paid.
14. Having regard to the arguments raised herein, I find that it is apparent that the Interested Party does owe the 1st Defendant some money. There are numerous correspondence availed as annexures of the 1st Respondent which show that Plaintiffs had engaged the 1st Defendant in an attempt to pay off the debt.
15. However, Neither the Plaintiff nor the Defendant have availed the particulars of the loan agreement including the charge. This court is therefore not able discern the terms and conditions under which the suit land came to be charged.
16. The test for granting an injunction are set out in the case of ***Giella vs Cassman Brown & Co. 1973 EA 358***. The principles as set out there in are;
17. Firstly, the Applicant must show that he has a *Prima Facie* case with a reasonable probability of success.
18. Secondly, that in the event that an injunction is refused, he stands to suffer loss or damage of such nature and magnitude that damages will not adequately compensate him.
19. Finally, that the comparative mischief likely to result to him should the injunction be refused outweighs that which result to the apposite party should it be granted.
20. The evidence in place before me is rather scanty. Plaintiffs' claim that the Suitland is Matrimonial Property but in their Submissions, it is averred that this is a developed Commercial Plot.
21. No Photographs have been availed to at least shed light on how the suit property looks like.
22. There is also no evidence by way of certificate of marriage affidavit or any other evidence to buttress the claim that 1st Plaintiff is the spouse of the Interested Party.

23. So far, I find that there is no *Prima facie* case that has been established.

24. In absence of any evidence that the suit land is where Plaintiffs are residing, then the application cannot succeed on the claim that they stand to suffer irreparable damage.

25. I however find that Defendants claim that they are not on a mission to sell the property. If they are paid, all would be well. On the other hand, I have already seen correspondence where plaintiffs had committed themselves to pay the loan balance. In the circumstances, and taking into account the fact that the court is in the dark regarding the particulars of the loan, then the balance of convenience does favour the applicants.

26. In the circumstances, the application is allowed in the following terms.

1) An order is hereby issued restraining the Defendants and their agents from selling parcel No. L.R. No. Ntima /Igoki/987 for a period of 8 (eight) months.

2) The 1st Defendant is hereby directed to avail to the applicant the particulars of the statement of the loan account forthwith.

3) The Interested Party and the Plaintiffs should continue to discharge the loan account in terms of the commitments they had made to the 1st defendant.

4) Applicants are condemned to pay costs of the application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 25TH JANUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Githinji for 1st Respondent Present

Kaumbi for Applicant absent Present

HON. L. N. MBUGUA

ELC JUDGE