



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 216 OF 2017

NANCY JEPKOECH KOSKEI.....PLAINTIFF

VERSUS

MARY WANJIKU MUGO.....DEFENDANT

RULING

1. This is a ruling in respect of plaintiff's Notice of Motion dated 22nd May 2017 pursuant to which the following orders are sought.

1. Spent.

2. Spent.

3. That pending the hearing and determination of this suit, the honourable court be pleased to issue a temporary injunction restraining the defendant herein whether by herself, her agents and/or servants from in any manner whatsoever dealing with or disposing or in any other manner alienating Kampi Ya Moto/Kampi Ya Moto Block 23/209.

4. That an order of this court do issue inhibiting the registration of any dealings whatsoever in respect of Kampi Ya Moto/Kampi Ya Moto Block 23/209 until further orders of this court are issued.

5. That costs of this application be in the cause.

2. The application is supported by an affidavit sworn by the plaintiff. She deposed that pursuant to sale agreement dated 17th September 2010, she bought five acres of land from the defendant at a consideration of KShs. 2,000,000/= (two million). The land was to be hived off the parcel of land known as **Kampi Ya Moto/Kampi Ya Moto Block 23/209**. She paid the entire purchase price and the defendant showed her the land. She took possession and started developing it. When the defendant summoned her to go and execute the transfer sometime in the year 2015, the plaintiff realized that the transfer was for only 2 acres and not 5 acres as was agreed. The defendant undertook to correct the discrepancy and to finalize the transfer process but has so far failed to do so. The plaintiff now fears that the defendant is in the process of selling the land to third parties.

3. Despite being served, the defendant never entered appearance and never filed any response to the application. Consequently, Ms. Alwala, learned counsel for the plaintiff submitted that the application is unopposed and urged the court to allow it as prayed.

4. I have considered the application. The principles applicable are that the applicant must establish a prima facie case with a probability of success. Even where a prima facie case is established, an injunction ought not to issue if damages can adequately compensate the applicant. Finally, if the court is in doubt as to the answers to the above two tests then the court should determine the matter on a balance of convenience. These principles were enunciated in the case of **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. Recently in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, the Court of Appeal further elaborated the test by stating that all the three **Giella** conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially and that if *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration.

5. The application is not opposed and the facts as deposed by the plaintiff are not disputed. In the circumstances, I am persuaded that the plaintiff has established a prima facie case with a probability of success. Since the transactions concerns purchase of land, there is real risk that the plaintiff may lose the particular parcel of land with its features such as its location. Such loss cannot be easily quantified. Damages would not therefore be an adequate remedy.

6. In the end, I order that:

(a) An injunction is hereby issued restraining the defendant whether by herself, her agents and/or servants from in any manner

whatsoever dealing with or disposing or in any other manner alienating Kampi Ya Moto/Kampi Ya Moto 23/209 pending hearing and determination of this suit.

(b) Costs of the application are awarded to the plaintiff.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 23rd day of February 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Ms. Wachira holding brief for Mr. Githui for the Plaintiff/Applicant.

No appearance for the defendant.

Court Assistant: Gichaba