

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 707 OF 2015

GEORGE MUTURI KATHURI.....1ST PLAINTIFF

PANUEL NDUGU GATHURI.....2ND PLAINTIFF

(Both suing as the Administrators of the Estate of Bilha Muthoni (Deceased))

VERSUS

ORIS OKUKU.....1ST DEFENDANT

LUCKY SUMMER ESTATE LIMITED.....2ND DEFENDANT

RULING

Through the application dated 22/7/2015, the Plaintiffs who are suing as the administrators of the estate of the late Bilha Muthoni, seek an injunction to restrain the 1st Defendant from trespassing, building a permanent house, disposing, wasting, transferring, alienating, charging or in any manner dealing with Plot No. 1363 R 1440 pending hearing and determination of the case. They also seek an injunction to restrain the 2nd Defendant from issuing a clearance certificate to the 1st Defendant until this case is determined.

The application is made on the grounds that the 1st Defendant commenced construction of a permanent house on Plot number 1363 R 1440 (“the Suit Property”) which was owned by the late Bilha Muthoni without the consent of the Administrators of her estate. The Plaintiffs allege that the Defendants have colluded to change ownership of the Suit Property.

The application is supported by the affidavit sworn by both Plaintiffs. They depone at paragraph 5 that they enjoyed quiet possession of the Suit Property until April 2015 when the 1st Defendant started constructing a permanent house on it. They annexed photographs which show that by then the building had progressed significantly and was at the third floor.

The Plaintiffs claim that the late Bilha Muthoni bought the Suit Property from the 2nd Defendant and was issued with a share certificate number 2518. Despite being served with court documents, the Defendants did not enter appearance or file any response. When the Plaintiffs first came to court, they were granted orders on 4/8/2015 stopping further construction. However, the Plaintiff’s advocates submitted that the 1st Defendant was proceeding with the construction. The Plaintiffs urged that they have a superior claim over the Suit Property and that they will suffer irreparable harm if the 1st Defendant is not restrained from constructing further by an order of injunction.

The Plaintiffs seek an equitable remedy. It is clear that by the time the Plaintiffs filed this suit the construction of the building had progressed up to the third floor. No explanation as to why it took the Plaintiffs long to move the court was given. The balance of convenience tilts against granting the Plaintiffs an order of injunction.

It is only at the trial when the issue of who owns the Suit Property can be determined.

The court declines to grant the orders sought in the application dated 22/7/2015 and directs the parties to set down the case for hearing. In the meantime, the status quo is to be maintained.

Dated and delivered at Nairobi this 13th day of February 2018.

K. BOR

JUDGE

In the absence of the Plaintiff and the Defendant

In the presence of Mr. V. Owuor- Court Assistant