



**REPUBLIC OF KENYA**

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

**ELC CIVIL SUIT NO. 229 OF 2011**

**JULIE MUKAMI KANYOKO ..... 1ST PLAINTIFF**

**SIMON NGETA KANYOKO ..... 2ND PLAINTIFF**

**PERPETUA WANJIRU KANYOKO ..... 3RD PLAINTIFF**

**=VERSUS=**

**SAMUEL MUKUA KAMERE ..... 1ST DEFENDANT**

**ANNE WAMBUI KAMERE ..... 2ND DEFENDANT**

**RULING**

1. Before me is a reconstructed court file. The original file went missing, prompting the Presiding Judge of the Court (Okongo J) to order a reconstruction of the File on 31/1/2018.

2. A perusal of the reconstructed file reveals that the plaintiffs brought this suit in 2011 seeking among other prayers, an order of specific performance against the defendants. They contended that on 15/1/2007, they entered into a land sale agreement with the defendants, pursuant to which the defendants agreed to sell to them a piece of land designated as Land Reference Number 27/347 measuring 0.1817 of a hectare and situated in Ridgeways, Nairobi. The agreed purchase price was Kshs 3,500,000. Under the agreement, the last instalment of the purchase price (Kshs 1,000,000) was to be paid upon registration of the property in the name of the purchasers. The plaintiffs contend that they discharged their contractual obligations and paid beyond the agreed instalments, leaving a balance of only Kshs 250,000 which they are ready and willing to pay.

3. On 3/7/2013 this court (**Mutungi J**) set aside the order of interlocutory judgment which had been entered by the Deputy Registrar but disallowed the defendant's plea for leave to file a defence out of time. The court ordered that the plaintiff's suit be set down for formal proof. Attempts to overturn that decision were declined by the Court of Appeal when the Court of Appeal (Warsame J) declined the defendants' application for leave to file a record of appeal out of time.

4. On 31/1/2018, the plaintiffs brought a Notice of Motion seeking the following interim prayers:

**a) Spent**

**b) Spent**

**c) That the 1st and 2nd Defendants jointly and severally their servants, agents, employees and or otherwise be restrained from entering, demolishing or any other way whatsoever interfering with the applicants' quiet enjoyment and/or possession of the suit property pending hearing and determination of this suit.**

**d) That the Officer Commanding Station (OCS) Muthaiga Police Station be ordered to ensure compliance with the Order of Injunction restraining the defendants jointly and severally from continuing with their acts of trespass, malicious damage to the applicants property and the respondents' unlawful and illegal attempts to seize the possession of the suit property by force.**

5. The plaintiff contended that they have been in possession of the suit property, having been put in possession pursuant to the sale agreement. They further contended that in December 2017, the defendants together with their agents, servants and employees, trespassed upon the suit property and started cutting down trees. The above act prompted the filing of the present application. The application is supported by the affidavit of Julie Mukami Kanyoko sworn on 31/1/2018. No response was filed against the application. The application is therefore unopposed.

6. The court has considered the application and taken into account the contextual background to the application. As things stand now, the plaintiff's claim for an order of specific performance and for damages is undefended. Secondly, the plaintiffs have placed evidence before the court to demonstrate that they entered into a sale agreement and discharged contractual obligations under the agreement. They have also demonstrated that they have had possession of the suit property since 2007. In light of the above background and evidence, the court is satisfied that the plaintiffs have satisfied the first and second limbs of **Giella v Cassman Brown (1973) EA 358**.

7. Consequently, the Notice of Motion dated 30/7/2018 is allowed in terms of prayers 3 and 4. This suit shall be set down for formal proof forthwith.

**DATED SIGNED AND DELIVERED AT NAIROBI ON THIS 29TH DAY OF JUNE 2018.**

.....

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr Kaka holding brief for MS Nyabuti for the Plaintiff

No appearance for the Defendant

Ms Halima Abdi - Court clerk