



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

E.LC CASE NO.19 OF 2018

JACKLINE CHEPNGETICH RONO.....1ST PLAINTIFF/APPLICANT

RACHEL CHEPNGENO MIBEL.....2ND PLAINTIFF/APPLICANT

VERSUS

CHRISPHINE KIPLANGAT RONO.....1ST DEFFENDANT/RESPONDENT

FLORENCE CHEPNGETICH.....2ND DEFFENDANT/RESPONDENT

AGNES CHEBET.....3RD DEFFENDANT/RESPONDENT

RULING

Introduction

1. What is before me is an application dated 1st September 2017 filed under certificate of urgency seeking orders to restrain the defendants/Respondents by themselves, agents, servants, employees or otherwise from taking possession, entering upon, remaining, erecting structures, or in any way interfering with the quiet possession of the parcel **KERICHO/SILIBWET/4099**, **KERICHO/SILIBWET/4089**, **KERICHO/SILIBWET/4088** and **KERICHO/SILIBWET/4004** or doing any other act which is prejudicial to the applicants.
2. The application also seeks an inhibition to be registered against the titles to the parcels of land known as **KERICHO/SILIBWET/4099**, **KERICHO/SILIBWET/4089**, **KERICHO/SILIBWET/4088** and **KERICHO/SILIBWET/4004**.
3. The application is supported by the affidavit of Jackline Chepngetich Rono, the 1st Plaintiff herein sworn on the 1st September 2017.
4. In the said affidavit the 1st Plaintiff depones that she is the 2nd wife of the 1st defendant. She states that, the suit properties **KERICHO/SILIBWET/4099**, **KERICHO/SILIBWET/4089**, **KERICHO/SILIBWET/4088** and **KERICHO/SILIBWET/4004** were the property of the 1st defendant/respondent's father, **FRANCIS KIPRONO ARAP MIBEL**, which after his demise were passed down to the 1st defendant/respondent through succession.
5. She further avers that the 2nd Plaintiff was appointed administrator of the deceased's estate.
6. She states that after the 1st defendant inherited the four land parcels which were still under one title, they established their matrimonial home thereon.
7. She states that their union was blessed with two children whom they raised on the suit property. Afterwards, the 1st respondent, without the knowledge or express permission of the 1st Applicant sold the entire land parcel to the 2nd and 3rd respondents. The conveyance was executed, registered and titles issued in the 2nd and 3rd Defendants/respondent's names.
8. It is the 1st plaintiff's contention that the forceful eviction being threatened against them would be detrimental to her and her children as this has been her matrimonial home for a long time.
9. The application is opposed by the 3rd defendant through her Replying affidavit sworn on the 26th March 2018.
10. In the said affidavit, she depones that on 8.1.2015 she purchased land parcel number **KERICHO/SILSBWET/4089** measuring 0.047 of an acre from the 1st defendant at a consideration of Kshs. 750,000. She states that she was subsequently registered as the owner of the suit land

on 26.5.2016.

11. She contends that at the time she bought the suit land, the 1st plaintiff was not in occupation thereof and she had no notice that it was the 1st plaintiff's matrimonial home.

12. She further states that she has made certain improvements on the suit property including inter alia the construction of a permanent structure thereon.

13. The 3rd defendant denies that the suit land was fraudulently transferred to her and states that the plaintiffs' suit against her is frivolous, vexatious and incompetent and ought to be dismissed with costs.

14. The application was canvassed by way of written submissions but only the applicants counsel filed their submissions.

Issue for Determination

15. From the pleadings, notice of motion, affidavit evidence and submissions, the only issue for determination is whether the plaintiffs are entitled to an order of injunction against the respondents.

Analysis and Determination

16. In order for the court to exercise its discretion in granting injunctive relief the applicant must meet the conditions set out in the case of **Giella V Cassman Brown & Company Ltd 1973 EA 358** which are as follows:

“First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide it will decide the application on a balance of convenience.”

A further test for the grant of an injunction has emerged from the approach adopted by Ojwang J (as he then was) in the case of **Amir Suleiman V Amboseli Resort Limited (2004) eKLR** when he relied on the English case of **Films Rover International 1986 3 All ER 772** where the court stated as follows:

“A fundamental principle is that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong”.

The first issue that the court must determine is whether the plaintiff has established a prima facie case with a probability of success.

In the case of **Mrao V First American Bank of Kenya Limited (2003) eKLR** Bosire JA (as he then was) stated as follows:

“A prima facie case is... one which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

17. The role of a Court faced with an interlocutory application for injunction is not really to make final findings but to weigh the relative strength of the parties' cases. This was so held in the case of **Mbuthia Vs Jimba Credit Corporation Ltd (1988) KLR1**, where the court stated as follows: -

“in an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties' cases,”

18. From the material placed before me so far, I am satisfied that the applicants have met the threshold for a prima facie case as defined in the Mrao case (supra). The 1st plaintiff has demonstrated that the suit property is her matrimonial home which was sold to the 2nd and 3rd defendants without her knowledge or consent. She has attached photographs of her home on the suit land. Section 12 (3) of the Matrimonial Property Act 2013, forbids a spouse from being evicted from their matrimonial home except by an order of the court.

19. I am also satisfied that if the orders sought are not granted, the plaintiff shall suffer irreparable loss as she will be thrown out of her matrimonial home which was apparently sold without her consent. In the circumstances I am of the view that she has satisfied the conditions set out in the case of **Giella V Cassman Brown & Company Limited**.

20. Accordingly, I grant a temporary injunction in the following terms:

a. A temporary order of injunction is hereby granted restraining the defendants/Respondents by themselves, agents, servants, employees or otherwise from taking possession, entering upon, remaining on, erecting structures, or in any way interfering with the quiet possession of the parcel **KERICHO/SILIBWET/4099 KERICHO/SILIBWET/4089, KERICHO/SILIBWET/4088 and KERICHO/SILIBWET/4004** or doing any other act which is prejudicial to the applicants interests in the suit property pending the hearing and determination of the suit herein.

b. An order of inhibition is hereby issued prohibiting any dealings in the titles to the parcels of land known as

KERICHO/SILIBWET/4099 KERICHO/SILIBWET/4089, KERICHO/SILIBWET/4088 and KERICHO/SILIBWET/4004
pending the hearing and determination of the suit herein.

c. The costs of this application shall be in the cause.

Dated, signed and delivered at Kericho this 11th day of July 2018

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J.M ONYANGO

JUDGE

In the presence of:

1. Ms Ngetich for the Plaintiff/Applicant
2. Miss Sitati for the 3rd Respondent
3. Court Assistant - Rotich