



**REPUBLIC OF KENYA**

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

**E.L.C. CASE NO. 139 OF 2018**

**LUCY NGUGI KAGAI.....PLAINTIFF**

**VERSUS**

**JOSEPH NJUGUNA KARIUKI.....DEFENDANT**

**RULING**

The Plaintiff seeks a temporary injunction to restrain the Defendant from selling, alienating, dealing or interfering with the land known as Dagoretti/Riruta/3882 (“the Suit Property”) which was hived from Dagoretti/Riruta/1115 until this suit is heard and determined. The Plaintiff claims she is the rightful owner of the Suit Property having inherited it from her late husband who bought it in 1991. She claims she has been in possession and has resided on the Suit Property since 1991. The Plaintiff claims that the Defendant unlawfully obtained a title over the Suit Property on 30/9/1998 yet she holds the original title deed for the mother title being Dagoretti/Riruta/1115. The Plaintiff avers that there has been litigation in the past over the ownership of the Suit Property in which her husband’s title over the Suit Property was upheld. She attached a copy of the land certificate over Dagoretti/Riruta/1115 in the name of Miringu Njoroge together with the suit papers for the cases filed in respect of this land.

The Defendant filed a notice of preliminary objection citing the grounds that this court has no jurisdiction to deal with this matter pursuant to Section 8(1) of the Land Control Act and Section 7 of the Limitation of Action Act. He also filed a Replying Affidavit in which he states that he purchased a portion of Dagoretti/Riruta/1115 from Mwathi Njoroge who jointly owned it with Miringu Njoroge. He mentioned the suits referred to by the Plaintiff in his affidavit. He maintains that the Plaintiff’s claim is statute barred since she did not file suit from 2003 when she claims she discovered the fraud.

Under Section 26 of the Limitation of Actions Act, where an action is based upon the Defendant’s fraud the period of limitation begins to run when the Plaintiff discovers the fraud. Evidence will have to be led on when the Plaintiff discovered that the Defendant had fraudulently transferred the Suit Property to his name.

The issue the court has to consider at this stage is whether the Plaintiff has a prima facie case against the Defendant with a probability of success, and whether she will suffer irreparable harm if the injunctive orders sought are not granted. The Plaintiff’s claim that she has been in possession of the Suit Property was not controverted by the Defendant.

The court is satisfied that the Plaintiff has a prima facie case against the Defendant and allows the application dated 26/3/2018. Costs shall be in the cause.

**Dated and delivered at Nairobi this 30<sup>th</sup> day of August 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Ms. Mungai for the Plaintiff

Ms. King’e for the Defendant

Mr. V. Owuor- Court