



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 36 of 2018

STELLA RIONOTUKEI (*Suing as an administrator of the Estate of*

RIONOTUKEI NYANGKAMAR MOSIONGUI).....PLAINTIFF

VERSUS

SAMUEL NGORARITA.....DEFENDANT

R U L I N G

1. The application dated 9/4/2018 and filed in court on 9/4/2018 has been brought by the plaintiff. It seeks the following orders:-

(a) That pending inter partes hearing of this application an order of temporary injunction be issued restraining the Defendant/Respondent, whether by himself, his agents, servants and or anyone claiming through him from trespassing, ploughing, planting, constructing any structure, entering and/or interfering with land parcel No. Kaisagat/Makhonge Block 1/Mwisho/144 in any manner whatsoever pending hearing and determination of this application and pending hearing and determination of this suit.

(b) That costs of this application be provided.

2. The applicant has brought the application under *Order 40 Rule 1,2 & 4* of the *Civil Procedure Rules 2010*. The application is supported by the sworn affidavit of the plaintiff.

3. The grounds upon which the application is made are contained at the foot of the application. They are that:- the applicant is the administrator to the estate of the deceased who died on 9/10/2017; that the limited letters of administration were issued to the applicant on the 13/3/2018; that prior to the death of the applicant's husband, he was the registered proprietor of land parcel No. **Kaisagat/Makhonge Block 1/Mwisho/144**; that vide a land sale agreed dated 30/11/1999, the applicant and her deceased husband purchased the suit land herein from one **John Mutai Longiro** at an agreed purchase price of **Kshs.200,000/=** and which sum was fully paid; that the applicant and her late husband took possession and established their home in the suit land and where the plaintiff and her children lived until late in the year 2017 when the defendant came and demolished their houses purporting that the suit property belongs to him; that the plaintiff's deceased husband secretly and without the consent of the plaintiff sold the whole parcel of land to the defendant vide sale agreement dated 20/3/2006; that the applicant objected to the sale but the same fell on deaf ears and finally the defendant had himself registered as the sole proprietor of the suit land and was issued with a title deed to that effect; that the applicant's deceased husband falsely swore an affidavit purporting that the original title deed was lost and on the strength of that affidavit, a title deed was issued without surrender of the original one; that the original title was and is still under the applicant's custody and this was done because of application's objection to the sale transaction between the defendant and the plaintiff's late husband and that the applicant has children and if the suit land is not restored back to them, they will be left landless and destitute.

4. The application is supported by the affidavit of the applicant dated 9/4/2018 which substantially reiterates the grounds on the face of the application.

5. In reply to the application the defendants filed a replying affidavit sworn on 17/4/2018 and avers that he first purchased three acres of the land and settled thereon and has been in continuous open and uninterrupted possession thereof for many years. On the 14th March 2008 the defendant bought a further two acres from the plaintiff's husband and immediately took possession thereof. The deceased helped him obtain a title deed in his name and he is in occupation. He avers that the plaintiff is an estranged wife of the deceased and she and the deceased have been separated since 2008 and it was only after the deceased passed on in the year 2017 that the plaintiff laid claim on the land.

6. There is in the record the plaintiff's further affidavit sworn on 26/4/2018 and filed on the same date. The plaintiff also filed supplementary affidavit sworn on 28/5/2018 on 29/5/2018.

7. The applicant filed her submissions on 13/7/2018 and the defendant on 23/7/2018.

8. What emerges from the affidavits is that the defendant is in possession of the land and that he entered into the land before these proceedings were commenced. This is made clear from the contents of the plaintiff's affidavit and supporting affidavit stating that their houses on the land were demolished by the defendant in the year **2017**. In addition in the grounds on the face of the application, she seeks that she and her family be restored back to the land.

9. The suit herein was filed on the **9th April 2018**. Even assuming that the plaintiff was evicted in **December 2017**, there are four months not accounted for. The applicant has not stated in her application that after the eviction she got back onto the land and rebuilt her houses. The evidence before me does not support such a scenario and I believe that she and her family are not in the suit land.

10. The legality of the acquisition of the land and the eviction of the plaintiff's family therefrom can not be determined at this stage. It will have to await the hearing of the main suit.

11. However, the issue at hand as to whether an injunction can issue has to be answered in the negative as the acts that are sought to be enjoined have already taken place before this suit was commenced. An order of injunction is not an effective remedy where what is sought to be enjoined has already taken place. I find that the most appropriate order would be that the status quo as at present be maintained pending the hearing and determination of the suit.

12. I therefore dispose of the application dated **9/4/2018** by issuing an order that the status quo of the suit land shall be maintained pending the hearing and determination of the main suit. The parties shall fix the suit for hearing expeditiously. The costs of the application shall be in the cause.

Dated, signed and delivered at Kitale on this **25th** day of **September, 2018**.

MWANGI NJOROGE

JUDGE

25/9/2018

Coram: Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the plaintiff

(Plaintiff present)

N/A for the defendant

(Defendant absent)

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

25/9/2018