



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 439 OF 2017

TERESIA GATHONI NDERITU.....PLAINTIFF

VERSUS

GICHURU KAMOTHO.....1ST DEFENDANT

NAIVASHA DISTRICT LAND REGISTRAR.....2ND DEFENDANT

RULING

1. By Notice of Motion dated 18th November 2017, the plaintiff sought the following orders:

a) *Spent.*

b) *Spent.*

c) *That this honourable court be pleased to issue an order of temporary injunction restraining the 1st respondent either by himself, agents and/or servants howsoever from selling, transferring, alienating, dealing with or otherwise interfering with Land parcel No. Naivasha/Municipality 4/41 formerly L.R 1144/1/IX and specifically plots number 170 and 171 pending the hearing and determination of this suit.*

d) *Spent.*

e) *That this honourable court be pleased to issue an order of inhibition against land parcel No. Naivasha/Municipality Block 4/41 formerly L.R 1144/1/IX and/or specifically plots number 170 and 171 pending the hearing and determination of this suit.*

f) *That the costs of this application be borne by the respondents.*

2. The application was supported by an affidavit sworn by the plaintiff. The 1st defendant opposed the application through his replying affidavit sworn on 5th December 2017. The 2nd defendant did not respond to the application and did not participate in its hearing.

3. The plaintiff contends that on 8th July 2011 the 1st defendant who is her brother in-law, sold to her two 50 by 100 plots at a total consideration of KShs.1, 000, 000 pursuant to a sale agreement of that date. The two plots were identified as G and H (the suit properties) in the sale agreement and were excised from Plot No. Naivasha/Municipality Block 4/41 which has since been subdivided and the suit properties are now known as plot 170 and 171. She further contends that despite overpaying the purchase price, the 1st defendant has failed to complete the transaction by ensuring registration of the suit properties in her favour.

4. On her part, the 1st defendant denies ever signing the sale agreement and disputes the plaintiff's allegations as regards the mode of payment of the purchase price.

5. The law on interlocutory injunctions is settled. An applicant seeking such an order must satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. He must establish a *prima facie* case with a probability of success. Even if a *prima facie* case is established, an injunction would not to issue if damages can adequately compensate him. Finally, if the court is in doubt as to the answers to the above two tests then the court would determine the matter on a balance of convenience. As was recently held by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, all the three **Giella** conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially and that if *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration.

6. I have perused the sale agreement dated 8th July 2011. It was executed in the presence of an advocate. Although the 1st defendant denies signing it, the advocate attested to signature of the agreement by vendor by the name of Gichuru Kimotho. In the circumstances, I am persuaded that it is necessary to preserve the suit property and that the plaintiff has established a prima facie case. I do not think that damages would be an adequate remedy.

7. The plaintiff has sought an order of inhibition. There is however no evidence that the parcels known as Naivasha/Municipality Block 4/170 and 171 exist on the register. In fact, going by the plaintiff's version of events, it appears that the two parcels are yet to be registered. An order of inhibition would thus not be efficacious since it cannot be registered against non-existent parcels.

8. In the end, I grant an injunction restraining the 1st defendant whether by himself, his agents and/or servants from selling, transferring or alienating Land Parcel No. Naivasha/Municipality Block 4/170 and 171 pending hearing and determination of this suit. Costs of the application shall be borne by the 1st defendant.

Dated, signed and delivered in open court at Nakuru this 11th day of December 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Bore holding brief for Mr Kipkoech for the plaintiff/applicant

Ms Amulabu holding brief for Mr Otieno for the 1st defendant/respondent

No appearance for the 2nd defendant/respondent

Court Assistants: Gichaba & Lotkomoi