



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 100 OF 2017

MARGARET NJOKI NJOROGE PLAINTIFF

VERSUS

ELIZABETH WAIRIMU KINUTHIA 1ST DEFENDANT

FAULU MICRO FINANCE BANK LIMITED 2ND DEFENDANT

RULING

1. By Notice of Motion dated 8th March 2017, the plaintiff sought the following orders:

a) *Spent.*

b) *Spent.*

c) *Spent.*

d) *That pending the hearing and determination of this suit this honourable court be pleased to grant an order of temporary injunction restraining, the respondents from selling, transferring, charging, discharging, leasing or in any other way dealing with title number Nakuru Municipality Block 22/728.*

e) *That pending the hearing and determination of this suit the honourable court be pleased to grant an order of temporary injunction restraining the 2nd respondent from releasing to the 1st respondent the original copy of title deed or discharge of charge in respect to title number Nakuru Municipality Block 22/728.*

f) *That pending the hearing and determination of this suit this honourable court be pleased to grant an order of inhibition any dealings in title number Nakuru Municipality Block 22/728.*

2. The application is supported by an affidavit sworn by the plaintiff. She deposed that she bought the parcel of land known as Nakuru/Municipality Block 22/728 (the suit property) in July 1996 and was duly registered as the proprietor on 31st July 1997. Since she resides and works in Switzerland, she left the title deed with her mother in Nakuru. Around October 2014, the 1st defendant unlawfully took the original of the title deed from the plaintiff's mother, forged the plaintiff's signature and had the suit property transferred to herself on 29th October 2014. The plaintiff added that the 1st defendant thereafter charged the property to the 2nd defendant to secure a loan of Kshs.3, 350, 000.

3. Though served, the defendants neither responded to the application nor attended court at its hearing. Counsel for the plaintiff therefore urged the court to allow the application.

4. I have considered the application and the supporting evidence. The law relating to interlocutory injunctions need no belabouring. The applicant must satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. She 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 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.

5. From the material placed before the court, I am persuaded that the plaintiff bought the suit property in July 1996 and was duly registered as the proprietor on 31st July 1997. I am also persuaded that the 1st defendant irregularly transferred the suit property to herself on 29th

October 2014 and thereafter charged it to the 2nd defendant. I make these findings based on the uncontroverted evidence before the court. Obviously, these finds are not final, the trial court will make its own findings based on the evidence that will be presented at the hearing of the suit. For now, I am persuaded that the plaintiff has established a prima facie case. Damages will not be an adequate remedy since the dispute involves title to land.

6. In the end, I make the following orders:

- a) I grant an injunction restraining the defendants from selling, transferring, charging, discharging, leasing or in any other way dealing with title number Nakuru Municipality Block 22/728 pending hearing and determination of this suit.
- b) I grant an injunction restraining the 2nd defendant from releasing to the 1st defendant the original of title deed or discharge of charge in respect of title number Nakuru Municipality Block 22/728 pending hearing and determination of this suit.
- c) That pending the hearing and determination of this suit an order of inhibition be registered against title number Nakuru Municipality Block 22/728.
- d) Costs to the plaintiff.

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

D. O. OHUNGO

JUDGE

In the presence of:

Mr Ikua holding brief for Mr Mutonyi for the plaintiff/applicant

No appearance for the 1st defendant/respondent

No appearance for the 2nd defendant/respondent

Court Assistants: Gichaba & Lotkomoi