



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO.162 OF 2017

PHILOMENA NJERI RUGAINI.....1ST PLAINTIFF/APPLICANT

SAMUEL RUGAINI MWAURA.....2ND PLAINTIFF/APPLICANT

VERSUS

LUCKY SUMMER ESTATE COMPANY LTD.....DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 10th March 2017 brought under Order 40 Rules 1 and 4 of the Civil Procedure Rules, and Section 1A, 1B and 3A of the Civil Procedure Act.
2. It seeks orders;
 - (1) *Spent*
 - (2) *Spent*
 - (3) *That a temporary injunction be granted restraining the defendant or servants, agents or otherwise howsoever from interfering with, trespassing upon, developing, alienating, selling, transferring or otherwise howsoever interfering with the plaintiff's ownership and quiet possession of all that property known as Plot No. 424 AR 652 Lucky summer Estate Company Limited Phase II being part of LR 31 Ruaraka area of Nairobi pending the hearing and determination of this suit.*
 - (4) *That the officer commanding Ruaraka Police Station be ordered to assist in giving effect to the orders issued pursuant to this application.*
 - (5) *That costs of this application be borne by the defendant.*
3. The grounds are on the face of the application and are set out in paragraph 1 to 3.
4. The application is supported by the affidavit of Samuel Rugaini Mwaura the 2nd plaintiff/applicant sworn on the 10th March 2017.
5. The defendant was duly served with copies of plaint and summons to enter appearance. It was also served with the notice of motion. It neglected and/or refused to enter appearance and/or file defence within the stipulated period. It also neglected to file a response to the notice of motion dated 10th March 2017.
6. As it stands the notice of motion dated 10th March 2017 is unopposed.
7. It is the plaintiff's/applicant's case that they are joint owners of Plot NO. 424 AR 652 Lucky Summer Estate. That they became owners vide Share Certificate No 2448 dated 16th June 2011. They have annexed a copy of the said share certificate. It is their case that the same people trespassed on to the same plot claiming ownership. They seek that the orders sought herein be granted.
8. I have considered the notice of motion, the affidavit in support and the annexures. The issue for determination is whether the plaintiffs'/applicants' application meets the threshold for grant of temporary injunction.

9. I am satisfied that the plaintiffs/applicants have established a prima facie case with a probability of success at the trial. The case has not been controverted.

10. I find merit in this application and grant the orders sought namely:-

(a) That an interlocutory injunction be and is hereby issued restraining the defendants or its servants, agents, from interfering with, trespassing upon, developing, alienating, selling, transferring or otherwise interfering with the plaintiff's ownership and quiet possession of all that property known as Plot No. 424AR 652 Lucky Summer Estate Company Limited Phase II being part of LR No. 31 Ruaraka situated within Ruaraka area of Nairobi pending the hearing and determination of this suit.

(b) That the officer commanding Ruaraka Police Station do assist in ensuring compliance of these orders.

(c) That the costs of this application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 5TH day of DECEMBER 2018

.....

L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiffs

.....Advocate for the Defendant

.....Court Assistant