



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 279 OF 2016

MARY WANJIRU MWANGI.....1ST PLAINTIFF
MONICAH WANGARI NJIRU.....2ND PLAINTIFF
PAULINE NJOKI KUNG'U3RD DEFENDANT
GLADYS WAMBUI THUKU4TH PLAINTIFF
NYAMBURA NJOROGE.....5TH PLAINTIFF

VERSUS

EUNICE WANJIRU IGAMBA (Sued as the administrator of the estate of **PETER IGAMBA NJOROGE**)1ST DEFENDANT

JOHN IGAMBA NJOROGE(Sued as the legal representative of the estate of the late **PETER IGAMBA NJORGE**) ...2ND DEFENDANT

RULING

(Application for injunction; plaintiffs pleading that certain land is held in trust for them; the properties having been registered in the name of their brother who is now deceased; defendants being administrators of his estate; application to preserve the properties pending hearing of the suit; argument by respondents that the suit is time barred as 12 years had lapsed from the time deceased obtained title; limitation of actions act providing for exemption where the property relates to trust property; issue of trust can only be determined at trial and in the meantime it is only fair that the properties be preserved; order that the properties be preserved and status quo be maintained pending hearing of the suit)

1. This suit was commenced by way of plaint filed on 27 July 2016. The plaintiffs are the children of one Njoroge Igamba (deceased) and the defendants are daughter in law and grandson of the late Igamba. The plaintiffs have pleaded that the late Igamba was the proprietor of the land parcels Shawa/Rongai Block 1/220, Elburgon/Elburgon Block 3/163 and Elburgon/Elburgon Block 1/21 (Kamirithu) (hereinafter "the suit properties"). It is pleaded that during his lifetime, the late Igamba directed the three suit properties be registered in the name of one of his sons, Peter Igamba Njoroge, who is also now deceased and who was husband to the 1st defendant and father of the 2nd defendant. It is averred that the properties were transferred to the late Njoroge for him to hold in trust for the rest of the family. It is pleaded that upon the demise of the late Njoroge, the defendants, secretly and without the knowledge of the plaintiffs, applied

for a grant of letters of administration for his estate, though the same are yet to be confirmed. In this suit, the plaintiffs want a declaration that the suit properties are held in trust for them and an order of permanent injunction to restrain the defendants from any dealings in the said properties.

2. Together with the suit, the plaintiffs filed an application for injunction, which is the subject of this ruling. In the application, they seek orders to restrain the defendants from dealing with the suit properties until this suit is heard and determined. The supporting affidavit is sworn by the 1st plaintiff, Mary Wanjiru Mwangi. In her affidavit, she has reiterated that the suit properties were held by the late Njoroge in trust for the rest of the family. She has stated that in the succession cause of the late Njoroge, they had petitioned for revocation of the grant issued to the defendants but they were directed to prove their claim before this court.

3. The application is opposed by the defendants who have filed a Replying Affidavit sworn by the 1st defendant, Eunice Wanjiru Igamba. She has deposed inter alia that the suit properties form part of the estate of the late Njoroge and that there is no indication in the register of these parcels of land that they were ever held in trust. She has deposed that the late Njoroge purchased the properties from his late father (Igamba) for consideration. It is stated that the applicants never made any claim during the lifetime of the late Njoroge. It is deposed that the land parcel Shawa/Rongai Block 1/22 has been disposed off to a third party and does not now form part of the estate of the late Njoroge and that orders cannot issue with regard to the said land. She has deposed that the land parcel Elburgon/Elburgon Block 3/163 is fully developed with permanent rental units; that these developments were done during the lifetime of the late Njoroge and that none of the applicants objected to the said developments. She annexed a note said to be written by one Joarm Mundia stating that the properties were transferred to the late Njoroge by his father. She has deposed that the property Elburgon/Elburgon Block 1/21 was their matrimonial home and that although her husband allowed some of the larger family to be buried there, it does not automatically make it land held in trust. She has asked that the application be dismissed.

4. A supplementary affidavit was filed by the 1st applicant. She has stated that they did not raise the issue of the trust during the lifetime of the late Njoroge because there was no apprehension of change of status. She is of the view that the fact that the 1st respondent has disposed of the land parcel Shawa/Rongai Block 1/2215 is the more reason why an injunction ought to issue so as to preserve the properties.

5. I have considered the matter alongside the written submissions of counsel.

6. What is before me is a claim that the suit properties were held by the late Njoroge in trust for the plaintiff. I have noted that in his submissions, Mr. Chege for the respondents argued that the suit is time barred by virtue of Section 7 of the Limitation of Actions Act (CAP 22) Laws of Kenya, which provides for 12 years for actions for recovery of land. It is pointed out that the title deeds were issued between 1988 and 1990. It was also contended that the applicants have been guilty of laches.

7. I have considered this argument. I do agree, that under Section 7 of the Limitation of Actions Act, actions to recover land need to be brought within 12 years. However, under Section 20 of the same statute, none of the periods of limitation apply in respect of actions to recover trust property. I think it will be unwise for me to determine with finality whether the action herein is time barred before having a chance to hear it on merits. For now, I am prepared to give the benefit of doubt to the applicants given the provisions of Section 20 of the Limitation of Actions Act.

8. In this case, the plaintiffs have alleged a trust exists. The parties herein are close relatives, the plaintiffs being siblings to the late Njoroge under whom the suit properties are registered. It is difficult at this stage of the proceedings, indeed it is in my view unwise, to make any determination on whether or not such trust does exist. It is however not strange, in our traditions and way of life, to have one sibling hold land in trust for the others. I am of the view that the question of whether or not a trust exists ought to be left for trial.

9. In the meantime, I think that it is necessary that the properties be preserved so that in the event that the plaintiffs succeed in their claim, their judgment is not rendered nugatory. There is evidence that the 1st

respondent is attempting to dispose the suit properties. Indeed, she herself annexed a sale agreement over the land parcel Shawa/Rongai Block 1/220. I have seen that the sale agreement is dated 26 June 2013. I have not been shown any authority from court authorizing the 1st respondent to sell this property before the grant of letters of administration is confirmed. Neither has a formal transfer of the property been effected and the same is still in the name of the late Njoroge. That property is therefore properly the subject of this case contrary to the contention of the respondents. It does in fact appear to me, prima facie without deciding the point, that the 1st respondent is unlawfully intermeddling with the estate of a deceased person. If the injunction is not issued, the suit properties risk being disposed of.

10. I am persuaded that this is a fit case for issuance of an order of injunction. I therefore do allow the application and do issue an order stopping the defendants from entering into any dealings over the suit properties until this case is heard and determined. I also issue an order of inhibition, inhibiting the registration of any disposition in the register of the suit properties namely Shawa/Rongai Block 1/220; Elburgon/Elburgon Block 3/163 and Elburgon/Elburgon Block 1/21 (Kamirithu), until this case is heard and determined. It is also advisable that the parties do hold in abeyance the succession proceedings in respect of the estate of the late Njoroge until it is determined whether or not part of what is registered in his name was held in trust.

In so far as occupation of these properties is concerned, I order that the current status quo be maintained until the case is heard and determined.

11. The costs of this application shall be costs in the cause.

12. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 21ST day of February 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Mr. Chege for the defendants/respondents

No appearance on the part of M/s Elizabeth Wangari & Co. Advocates for the plaintiff/applicants

Court Assistant: Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU